United States Court of Appeals

for the Second Circuit

APPENDIX

76-2026

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

JOHN FRANZESE,

Petitioner-Appellant.

On Appeal From the United States District Court for the Eastern District of New York

APPENDIX FOR APPELLANT

Volume I, pp. 1a – 254a

MICHAEL B. POLLACK
Attorney for Petitioner-Appellant
1345 Avenue of the Americas
New York, New York 10019
(212) 247-3720

UNITED STATES COURT OF APPEALS
FILED
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DANIEL FUSARO, CLERK
SECOND CIRCUIT

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DOCKET SHEET (75C1613) 1a

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	R	R 23	DEMAND $	OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
207-1	75	1613	09	29	75	2	510				APPEAL		0712		MISHLER, J.	

PLAINTIFFS

UNITED STATES OF AMERICA

DEFENDANTS

JOHN FRANZESE, et al

CAUSE

Pursuant to Sec. 18 U.S.C. 2255
(Related Case 66-CR-161)

ATTORNEYS

DAVID G. TRAGER
U.S. Atty.,
225 Cadman Plaza East
Brooklyn, N.Y. 11201

MICHAEL B. POLLACK,ESQ.,
Attorney for John Franzese
1345 AVENUE OF THE AMERICAS
NEW YORK, N.Y. 10019
Tel: (212) 247-3720

CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID DATE	RECEIPT NUMBER	AMOUNT PAID	STATISTICAL CARDS CD	DATE MAILED
	9-29-75			JS-5	
				JS-6	

UNITED STATES DISTRICT COURT DOCKET

DATE	NR.	PROCEEDINGS
9-75		NOTICE OF MOTION FILED for an order pursuant to Title 28 U.S.C. Sec. 2255, setting aside the judgment of conviction, rendered April 17, 1967, etc. (returnable Nov. 7, 1975 at 2:00 P.M.) (1)
29-75		Memorandum of Law filed in support of defendants Franzese's motion. (2)
9-75		ARREST WARRANT ISSUED and VACATED. (3)
9-75		Before MISHLER, CH. J. Hearing held on the affidavit of Charles Zaher. Hearing Concluded.
-30-75		Stenographer's transcript dtd 9-29-75 filed. (mg) (4)
-6-75		Memorandum of Law filed in opposition, etc. (5)
7-75		Before MISHLER, CH. J. Case called. (re: Motion to set aside the judgment, etc. Motion argued - DECISION RESERVED
11-75		Minutes of the stenographer filed dated Nov. 5, 1975. (6)
14-75		Supplemental Memorandum of Law filed in support of the motion, etc. (7)
-17-75		Supplemental Memorandum of Law filed. (8)
-1-75		Copy of letter of MISHLER, CH. J., filed dated Nov. 28, 1975 addressed to MICHAEL POLLACK, ESQ., that the hearing originally scheduled for Thursday, Dec. 4, 1975 is adjourned to Friday, Dec. 12, 1975. (9)
2-75		Petition for writ of habeas corpus filed.
2-75		By MISHLER, CH. J. - Writ issued ret 12-12-75. (10)
/75		Letter dated 11/28/75 filed M. Pollack to Ch.J.Mishler. (11)
-75		Before MISHLER, J.-Hearing adj'd to 12-12-75.
-75		Petition for writ of habeas filed.
-75		By MISHLER, CH J - Writ issued for Thomas Matteo, ret 12-12-75 at 10 A.M. (12)
2-75		Before MISHLER, CH. J. Case called. Petitioner Franzese and counsel Mr. Pollack present. Hearing ordered and begun on the petitioner's motion for a new trial. BOTH SIDES RES[illegible] Decision reserved. Hearing concluded.
7-75		Writ returned and filed. (13)
3-75		MEMORANDUM OF LAW filed. (14)
8-75		MINUTES OF STENOGRAPHER FILED (dated Dec. 12, 1975) (15)
-75		Govt's memorandum of law filed. (mg) (16)
76		Letter dtd 12-30-76 to J. Mishler from Michael B. Pollack filed. (17)
76		Letter dtd 1-15-75 to J. Mishler from Thomas R. Pattison filed. (18)
76		By MISHLER, J.-MEMORANDUM OF DECISION & ORDER dtd 1-21-76 denying the motion to vacate sentence filed. P/C mailed (19)
76		Judgment dtd. 1-22-76 ordered that the petitioner's application to vacate the jdugment of conviction and a new trial is in all respects denied filed. (20)
76		Copy of writ returned and filed/executed. (21)
76		Notice of appeal filed. Copy mailed to C of A. (22)
		ENTIRE FILE CERTIFIED AND HANDED TO MICHAEL EISENSTEIN TO BE TRANSMITTED TO THE COURT OF APPEALS.
76		Acknowledgment rec'd from C of A for receipt of record on appeal filed. (23)

BEST COPY AVAILABLE

DOCKET SHEET (67CR17)

D. C. Form No. 100

CRIMINAL DOCKET 67-Cr- 17

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.:
vs.	
JOHN FRANZESE, a/k/a "Sonny", et al	
William David Crabbe, a/k/a "Red"	
John Matera, a/k/a "Johnny Irish"	
Nicholas Potere	For Defendant:
Joseph M. Florio a/k/a "Whitey"	

ABSTRACT OF COSTS	AMOUNT		CASH RECEIVED AND DISBURSED			
			DATE	NAME	RECEIVED	DISBUR
Fine,						
Clerk,						
Marshal,						
Attorney,						
Commissioner's Court,						
Witnesses,						

DATE 1967	PROCEEDINGS
Jan 26	Filed cert copy of Order of EDNY-66Cr161-ordering that trial of this case be transferred from EDNY to NDNY , and further ordering that trial commence 10:00 AM Monday, January 30, 1967 at United States Court House, Albany, New York.
Jan 27	Filed certified copy of Indictment and docket entries
Jan 30	Filed Notice of appearance of Deft Franzese-Landy & Schwartz
	Filed warrant-Franzese-ex Apr 12, 1966, NYC
	Filed Notice of appearance of Matthew Brandenburg for deft Nicholas Poterie dated Apr 13, 1966
	Filed Notice of appearance of Wm Sonenshine for deft Anthony Polisi dated Apr 13
	Filed Notice of appearance of Alfred Santangelo for deft Anne Messineo dated Apr 13
	Filed warrant of deft Nicholas Potere, ex Apr 12, 1966
	Filed warrant of deft Anthony Polisi-ex Apr 12, 1966
	Filed warrant of deft Anne Messineo ex Apr 12, 1966
	Filed warra deft Joseph M. Florio ex April 1966

DATE	PROCEEDINGS
	Filed Notice of appearance of William Sonenshine for deft Joseph M. Florio dated Apr 13, 1966
	Filed Note of appearance of Lester Landy for deft William D. Crabbe-dated Apr 14, 1966
	Filed warrant of deft Wm.D. Crabbe, ex April 14, 1966
	Filed Notice of appeal from order fixing bail of deft Potere
	Filed Petition for writ of habeas corpus, deft John Matera dated Apr 19, 1966
	Fildd writ of deft Matera ex Apr 25, 1966
	Filed Notice of appearance of Gustave Newman for deft Matera-dated Apr 26, 1966
	Filed CJA Form 2 for deft James J. Smith-A.F.Marra-
	Filed Notice of appearance of Julius Itzkowitz for deft Richard P. Parks-dated Apr 29, 1966
	Filed Notice of appearance of Helfand & Lesser for deft John Joseph Cordaro-dated Apr 29, 1966
	Filed Motion for a bill of particulars and affidavit-Vitello-deft Potere dated May 5, 1966
	Filed Notice of Motion and Affidavit of Vitello-dated May 11, 1966
	Filed Notice of appearance of Philip Vitello for deft Potere dated Apr 25, 1966
	Filed Notice of appearance of Philip Vitello for Louise Florio dated Apr 25, 1966
	Filed Memorandum & Order for defts Crabbe,Matera&Polisi to appear in court June 13, 1966
	Filed substitution of atty Vitello for Soneshine for deft Florio dated May 16, 1966
	Filed stipulation returning books to Vitello.dated May 17, 1966
	Filed substitution of atty Philip Vitello for Matthew Brandenburg for deft Potere
	Filed Bill of particulars -Anne Messineo, dated May 18, 1966
	Filed Bill of particulars -defts Potere and Florio-dated May 18, 1966
	Filed Notice of motion and affidavit-deft Crabbe-dated June 24, 1966
	Filed affidavit in opposition-deft Crabbe-dated July 7, 1966
	Filed order denying motion of Crabbe-dated July 11, 1966
	Filed Notice of Motion of deft Franzese-requesting permission to travel out of state dated ~~July 22, 1966~~ Sept 9, 1966
	Filed Notice of appearance-Raymond Brown for deft Matera-dated Aug 15, 1966
	Filed order granting Raymond Brown to appear for deft Materadated Aug 15, 1966
	Filed affidavit and notice of motion of Helfand & Lesser to return articles seized Oct 1, 1965-deft Cordero-dated Aug 24, 1966
	Filed Notice of motion of deft Franzese to produce Zaher, Jr. dated Sept 9, 1966
	Filed Notice of Motion for order to be served on attys for defts Cordero, etc. dated Sept 9, 1966
	Filed Notice of appearance of Theodore Rowley for deft Matero-dated Apr 19, 1966
	Filed CJA Form 2 deft Crabbe-Maurice Brill counsel
	Filed bill of particulars amendment-dated Sept 23, 1966
	Filed Notice of appearance of Peter Sabbatino for deft John Franzese dated Sept 26, 1966
	Filed Notice of Motion and affidavit for deft Crabbe to proceed in forma pauperis
	Filed Notice of Motion and affidavit -deft Crabbe-purs to Rule 7(f) dated Oct 25, 1966
	Filed Stipulation to substitute Harold Schwartz for deft Polisi-dated Nov 22, 1966
	Filed affidavit in opposition dated Nov 28, 1966

CRIMINAL DOCKET 67Cr17 U. S. vs John Franzese et al

DATE 1967	PROCEEDINGS
Jan 30	Filed affid avit about daily copy dated Nov 28, 1966
	Filed Bill of Particulars-deft Crabbe - dated Dec 19, 1966
	Filed Petition for writ of habeas corpus-deft Matera-dated Dec 20, 1966
	Filed Petition for writ of habeas corpus-deft Polisi-dated Dec 20, 1966
	Filed Petition for writ of habeas corpus-deft Franzese-dated Dec 22, 1966
	Filed Petition for writ of habeas corpus-deft Florio-dated Dec 22, 1966
	Filed stipulation of substituting Vitello for deft Potere, and Jaffe for Feldma dated Dec
	Filed Notice of appearance of Jaffe and Feldman for Potere, dated Dec 22, 1966
	Filed appeal for reduction of bail of deft Potere-dated Dec 27, 1966
	Filed stipulation of substitution of Maurice Edelbaum and L.K.Feitell for deft dated 12,
	Filed writ of habeas corpus-Franzese-dated Jan 5, 1967
	Filed writ of deft Polisi-filed Jan 5, 1967
	Filed writ and execution of deft Florio filed Jan 5, 1967
	Filed Motion for discovery and inspection and affidavit for deft Potere dated 1/
	Filed Motion for severance and affidavit-deft Potere-dated Jan 23, 1967
	Filed CJA Form-2 deft Polisi-Henry Branwell-atty dated Jan 17, 1967
	Filed affidavit in opposition to deft Potere's request for statements, etc 1/28
	Filed affidavit in opposition to deft Potere's request for separate trial-motion 1/
	Filed petition for writ of habeas corpus-deft Florio-for Albany, NY Jan 30, 1967-4 1/28
	Trial moved by U. S. Attorney, EDNY-jury drawn and sworn
Jan 31	Trial continued
	Filed Order Crabbe to proceed in forma pauperis granted
	Filed affidavit from deft Potere as to transcript of record-daily copy
	Filed statement of Matera asking for daily copy
Feb 1	Trial continued-Feb 1,2,3,7,8,10,13,14,15,16,17,20,21,23,24,27,28,Mar 1,2,3,
Feb 13	Filed Court Exhibit #2
Feb 15	Filed Court Exhibits #3,4,5.
Feb 24	Counts 1,2,3 and 4 are dismissed as to each of defts William David Crabbe and John Matera
Feb 24	Filed Stipulation signed by all counsel that each of the banks stated in the stipulation was an insured bank(Federal) on dates stated.
Feb 27	Filed Court exhibit #6-requests to charge of deft Franzese
	Filed Court exhibit #7-requests to charge of deft Crabbe
	Filed Court exhibit #8-requests to charge of deft Potere
	Filed Court exhibit #9-requests to charge of deft Potere
	Filed Court exhibit #10-requests to charge of deft Florio
	Filed Court exhibit #11-Govt's requests to charge
Mar 1	Filed writ of Guccia to be at Albany, Feb 24, 1967

D.C. 108

CRIMINAL DOCKET 67Cr17 U. S. vs John Franzese, et al

DATE 1967	PROCEEDINGS
Mar 1	Filed Court exhibit #1
Mar 1	Filed Court exhibit #13
	Filed Court exhibit #14-requests to charge of deft Matera
Mar 1	Trial continued-Judge Mishler charges the jury, and they retire at 12:28 PM in charge of sworn officers, to consider their verdict. The alternate jurors ar excused from considering the case.
Mar 1	Filed court exhibits #15,16,17,18,19,20(Notes from jury)
	Filed court exhibits #21,22,23(Notes from Jury)
Mar 2	Filed court exhibits #23,24,25,26,27,28,29(Notes from Jury)
Mar 3	Filed Court exhibit #30(Note from Jury)
Mar 3	The Jury at 12:05 AM come in to Court and say they find a verdict as follows:vi On count 2, the defendants John Franzese, Nicholas Potere and Joseph M. Florio found guilty; on count 4-defendants John Franzese, Nicholas Potere and Joseph M. Florio are found guilty; on count 7-defendants John Franzese, Nicholas Pote Joseph M. Florio, John Matera and William David Crabbe are found guilty; on count 8-defendants John Franzese, William David Crabbe, John Matera, Nicholas Potere and Joseph M. Florio are found guilty.
	On motion of Mr. Edelbaum the jury is polled-unanimous verdict.
	All motions directed to the verdict are reserved to day of sentence.
	The date of sentence is set as April 14, 1967-all proceedings are remanded to Eastern District of New York.
	On motion of their respective attorneys the defendants Franzese, Potere and Florio are continued on bail in the amount as fixed until the date of sente
Mar 3	Filed Court exhibit #31-verdict signed by Foreman

D. C. Form No. 100 Rev.

CRIMINAL DOCKET

66CR 161

DOCKET SHEET (66CR161) 7a

TITLE OF CASE	ATTORNEYS
THE UNITED STATES MISHLER, J. CLOSED	
vs.	For ~~INS~~ Deft. JOHN FRANZESE
JOHN FRANZESE, a/k/a "Sonny"	Lester Landy
WILLIAM DAVID CRABBE a/k/a "Red"	136 Remsen St. Bklyn. N.Y.
JOHN MATERA, a/k/a "Johnny Irish"	MA-4-5877 - 8 UL-2-2171
NICHOLAS POTERE,	
JOSEPH M. FLORIO, a/k/a "Whitey"	
ANNE MESSINEO, a/k/a "Anne The Singer"	For Deft. William D. CRABBE
ANTHONY POLISI,	Court Appointed Counsel
JOHN JOSEPH CORDERO, a/k/a "Blueboy"	Maurice Brill
RICHARD PAUL PARKS and	291 Broadway, N.Y.C.
JAMES JOSEPH SMITH	BA-7-6680

ABSTRACT OF COSTS	AMOUNT	
Fine, Franzese	Bail	00
Clerk, Jos. M. Franzese	20,000	02
Marshal,		
Attorney,		
Commissioner's Court,		
Witnesses,		

CASH REC

DATE	NAME	RECEIVED		DISBURSED	
8-24-	Appeal (Franzese)	5	-		
8-26-72	[illegible]			5	-
9-27-72	Appeal withdrawn	5			
10-2-72	[illegible]			5	-

DATE	PROCEEDINGS
-12-66	Before Zavatt Ch J - Indictment Ordered Sealed and filed - Bench Warrants Ordered for 7 defendants.
-12-66	Bench Warrants Issued.
-12-66	Before Zavatt Ch J - Defendant FRANZESE produced in Court on Bench Warrant. - Sealed Indictment ordered opened. Defendant and counsel present - Defendant arraigned and plea not guilty - 30 days for motions is granted - Bail fixed at $150,000.00 and case placed on General Calendar.
2-66	Notice of Appearance filed for defendant JOHN FRANZESE.
2-66	Bench Warrant returned executed and filed (FRANZESE)
3-66	Before Zavatt, CH. J. - Case called - Defts. Potere, Florio, Messineo and Polisi brought into court on Bench Warrants - Counsels for defts. present - Defts. Crabbe and Matera not present - Defts. Potere, Florio and Messineo and Polisi arraigned and pleaded not guilty - Bail set as to defts. Potere

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66CR 161

#2 DATE	PROCEEDINGS
	$65,000.00 Florio, $65,000.00, Messineo, $20,000.00 and Polisi $25,000.00
	Case adjourned to General Calendar - Probation is extended for a period of five years from the date of sentence in Indictment #64-CR-354 as to deft. Anne Messineo.
4-13-66	Bench Warrants returned executed and filed as to defts. POTERE, POLISI, MESSINEO AND FLORIO.
-14-66	Before Abruzzo J - Defendant CRABBEE brought into court on Bench Warrant. Defendant and counsel Lester Landy present - Defendant Arraigned and plea not guilty - Bail fixed at $50,000.00 if conditions are met to the approval of Judge Abruzzo otherwise bail to be in the amount of $75,000.00. Case placed on General Calendar.
-14-66	Notice of Appearance filed for defendant C.ABBEE
14-66	Bench Warrant Returned Executed and filed, as to defendant C.ABBEE
4-18-66	Notice of Appeal filed by Defendant POTERE.
-18-66	Copy of Appeal mailed to Clerk,C of A. with docket entries.
-19-66	Petition for Writ of Habeas Corpus Ad Prosequendum filed as to defendant MATERA.
-19-66	By Rayfiel J - Writ Issued as to defendant MATERA.
4-20-66	Stenographers transcript of arraignment of JOHN FRANZESE filed.(dated 4/13
4-21-66	Stenographers transcript . dated April 13, 1966, filed.
4-26-66	Writ of Habeas Corpus returned and filed - Executed . (as to JOHN MATERA)
-26-66	Notice of Appearance filed for defendant MATERA
-26-66	Before Rayfiel J - Defendant MATERA and Counsel present - Defendant arraign and plea not guilty - Bail fixed at $100,000.00 and case placed on General Calendar.
-29-66	Before Rayfiel J - Defendants CORDERO, PARKS and SMITH present and with counsels - Defendants arraigned and each plea not guilty - Bail fixed at $5000.00 for each defendant and case placed on General Calendar.
5-66	Notice of Motion of Philip Vitello for an order pursuant to Rule 7(f) F. R. C. P. for Bill of Particulars etc. filed returnable 5-16-66, as to defts. FLORIO & POTERE.
5-66	Memorandum of Law of Philip Vitello filed.
11-66	Notice of Motion filed to suppress, etc. pursuant to Rule 41(e) F.R.C.P, as to defendant NICHOLAS POTERE (ret. 5/16/66), with memo of Law
16-66	By Bruchhausen, J. - Stipulations of substitution of attorneys, Philip Vit Esq. of 50 Court St.,Brooklyn, N.Y. , be substituted in place of William Sonenshine, as atty. for deft. Joseph M. Florio, and deft. Nicholas Poter

CRIMINAL DOCKET **66CR 161**

#3 DATE	PROCEEDINGS
5-16-66	Stipulation filed and agreed and consented to by and between the pa
	hereto that all of the books, documents, etc. are to be returned to
	Philip Vitello, Esq., 50 Court St.,Bklyn, N.Y. , as indicated.
5-16-66	Notices of Appearances filed for Defendants Nicholas Potere and
	Joseph M. Florio by Philip Vitello, 50 Court St.,Brooklyn, N.Y.
5-16-66	Before Zavatt, Ch. J. - Hearing on motion for a Bill of Particulars
	etc. Case called - Respectfully referred to Judge Bruchhausen,
5-16-66	Before Zavatt, Ch. J. - Hearing on motion to suppress, etc. Case c
	Respectfully referred to Judge Bruchhausen.
5-16-66	Before Bruchhausen, J. - Hearing on motion for a Bill of Particul
	etc. - Motion granted on consent. Government to submit settle orde
5-16-66	Before Bruchhausen, J. - Hearing on motion to suppress, etc. Mot
	granted on consent. Government to submit settle order.
5-16-66	Before Bruchhausen, J. - Case called for trial - All defendants a
	counsel present - Oral motion by attorney for Defendant MESSINEO,
	motion made in 65-CR-445 will be transferred and to apply to Indic
	No. 66CR-161. Motion granted to transfer motion. Defendants SMITH,
	PARKS & CORDERO each withdraws their pleas of not guilty, and afte
	being warned of their rights, and on their own behalf, enter pleas
	guilty to count One(1) of the Indictments. Sentence adjourned with
	date. Defendants in custody. Case set down to May 18, 1966, for al
	purposes.
5-18-66	Before Bruchhausen, J - Bill of Particulars filed by Government
	for ANNE MESSINEO.
5-18-66	Before Bruchhausen, J. - Bill of Particulars filed by Government
	for NICHOLAS POTERE & JOSEPH M. FLORIO.
5-18-66	Before Bruchhausen, J. - Case called - Defendants and counsel pre
	Hearing held and concluded - Hearing on withdrawal of attorneys fo
	defendants WIlliam Crabbe, John Matera and Anthony Polisi, adjourn
	to June 13, 1966, at 10:00 A.M. before Bruchhausen, J. - Court den
	application by all attorneys for defendants for change of venue -
	Case adjourned to October 3, 1966, for trial.
5-23-66	By Bruchhausen, J. - Order filed that Attorneys LANDY, NEWMAN and
	SONNENSCHEIN , are directed to appear in Court Room #2, June 13, 19
	Defendants CRABBE, MATERA & POLISI are likewise directed. (r/c to a
6-13-66	Before Bruchhausen, J. - Case called - Deft. CRABBE & counsel Leste
	Landy present. Deft, through his Attorney, Lester Landy, moves for
	reduction in bail - Denied - Landy to remain as Attorney for deft. C

66CR 161

DATE	PROCEEDINGS
	until such time as substitute counsel may be retained - agreed to by deft.
	Defendants MATERA & ANTHONY POLISI present with counsel W.Sonenshine-
	Hearing for Substitution of Attorney adjourned to June 21, 1966 at 10:00 A.M.
1-66	Before Bruchhausen, J. - Case called - Defendant and counsel present -
	Case adjourned to July 12, 1966.
-24-66	Notice of Motion of Arthur Layton for an order reducing the bail of
	defendant CRABBE returnable 7-5-66 filed.
-66	Affidavit of Joseph Florio filed (2)
5-66	Before Abruzzo J - Hearing on Order to show cause why an order ruducing the
	bail of deft. CRABBE etc., - Case called and adjourned to 7-7-66 at 10:00
	A. M. before Judge Abruzzo.
6-66	Steno's minutes dated June 13, 1966 filed
6-66	Steno's minutes dated June 21, 1966 filed.
-7-66	Affidavit of MICHAEL J. GILLEN Assistant U.S. Attorney filed in opposition
7-66	Before Abruzzo J - Hearing on Order to Show Cause for reducing the bail of
	defendant CRABBE etc. Case called Defts attorney present - Motion adjourned
	to 7-8-66 at 10:30 A.M. - Defendant to be present.
8-66	Before Abruzzo J - Case called - Defendant and counsel present - Motion
	argued and denied. $50,000.00 bail to stand if conditions are met that
	Judge Abruzzo is allowed to examine the Surety. If ant motion is made
	before another Judge or Commissioner for Reduction of Bail the Bail is
	$75,000.00. Submit order on or before July 15,1966 as to Deft. CRABBE
-66	By Abruzzo, J. - Order filed denying motion of William David Crabbe
	for reduction of bail. (p/c mailed to attys.)
-66	Before Rayfiel, J. - Case called - Defendants MATERA & POLISI and counsel present -
	Adjourned to July 25, 1966.
-66	Affidavit of Sale (2) New York State Registration, Statement of Transaction,
	Acknowledgment of Purchase of Motor Vehicle & Invoice, filed.
-62	Notice of Motion filed (ret. 8/1/66) for an order granting to the defendant,
	JOHN FRANZESE, permission to travel outside of the jurisdiction of E.D.
	of New York, particularly to the Atlantic City and Woodbridge area, etc.
5-66	Before Zavatt Ch J - Case called for Substitution of Attorneys for Defts.
	MATERA & POLISI - Defts present . - Motion by the firm of Evseroff, Newman &
	Sonnenshine to be relieved as counsel for deft. POLISI - Motion Denied. Motio
	to be relieved as counsel for deft. MATERA - Motion Granted. - Substitution
	of Attorney for deft. MATERA adjourned to August 8, 1966.
6	Before Dooling J - Motion for an order granting permission to deft. FRANZESE

- CONT'D -

CRIMINAL DOCKET **66CR 161**

DATE	PROCEEDINGS
	to Leave the Jurisdiction of the Eastern District of New York, etc. Motion Granted on Consent - Settle Order on Notice giving precise da and places of defendants itinerary
8-8-66	Before Dooling, J. - Case called - Defendant MATERA and counsel present - Case adjourned to Aug. 15, 1966 at 2:00 P.M.
8-15-66	Before Mishler, J. - Case called - Respectfully referred to Judge Dooling at 2:00 P.M. Aug. 15, 1966.
8-15-66	Before Dooling, J. - Case called for assignment of Counsel - Deft. present with his counsel Raymond A. Brown. Defts. attorney not admitted to practice in this Court. On his oral motion Court granted him permission to defend the defendant. Papers to be sent to his Sponsor, Theodore Rosenberg, in application to admission.
8-15-66	Notice of Appearance filed for deft. MATERA
8-15-66	By Dooling, J. - Order filed permitting Raymond A. Brown, to appear as attorney for deft. MATERA and designating Theodore Rosenberg, Esq., 133 Schermerhorn St., Brooklyn, N.Y. 11201, for service of all papers. (p/c mailed to attys.)
8-24-66	Notice of Motion directing the return of the property and articles seized from Eleanor Cordero, etc. filed (ret. 8/29/66).
8-29-66	Before Rayfiel J - Motion for the return of the property and article seized from Eleanor Cordero etc., Adjourned to 9=12-66
9-9-66	Notice of Motion of Lester Landy for an order pursuant to Rule 17, F.R.C.P. that the deposition of Charles E. Zaher Jr be taken before a Notary Public filed returnable 9-26-66 (FRANZESE)
9-9-66	Notice of Motion of Lester Landy for an order pursuant to Rule 16 F.R.C.P. directing that all statements of CORDERO, PARKS, SMITH & ZAHER in prior trial or before a Grand Jury filed returnable 9-26-66 (FRANZESE)
9-12-66	Before Rosling J - Motion for an order directing the return of prop seized from Eleanor Cordero etc., Case called and adjourned to 9-19 on request of both parties - Only U.S. Present.
9-19-66	Notice of Appearance filed (MATERA)
9-19-66	Before ZAVATT, CH. J. - Case called - All defendants and counsels present - Hearing for assignment of counsel for deft. CRABBE - Court assign counsel - Case adjd. to 9/26/66.
9-20-66	Before Zavatt Ch J. - Case called for assignment of Counsel - Deft. WILLIAM DAVID CRABBE present - Court appoints Maurice Brill as Counsel for deft. CRABBE.

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-20-66	By Zavatt Ch J. Order Appointing Counsel for deft. CRABBE filed.
-19-66	Before Zavatt, Ch. J. - Motion for an order directing the return of the property and articles seized, etc. Case called - Motion withdrawn (see letter dated 9/22/66). (as to Eleanor Cordero)
-23-66	Governments Bill of Particulars filed.
26-66	Notice of Appearance filed. (JOHN FRANZESE)
26-66	Before Zavatt, Ch.J. - Case called- Defts. and counsels present - Case marked Ready for Oct. 3, 1966, for trial.
27-66	Before Zavatt, Ch.J. - Pre-trial Conference with all attorneys present held at 2:00 P.M. to 4:45 P.M. Motion directing all written statements to be served upon the undersigned as attys. for deft., etc. is withdrawn also the motion for an order directing that the deposition of Charles E. Zaher,Jr., is also withdrawn.
[illegible]-66	Before Bartels, J. - The above motions were respectfully referred to Chief Judge Zavatt.
28-66	Pre-trial conference in chambers of Chief Judge Zavatt. Motion to adjourn trial to January 1967 granted, with consent of United States Attorney.
3-66	Before Zavatt, Ch. J. - Case called - Case adjourned to Jan. 1967 Term by consent of all attys for defendants and U.S. Attorney.
21-66	Stenographers transcript dated April 14, 1966, filed.
-25-66	Notice of Motion filed pursuant to Rule 7(f) F.R.C.P., for Bill of Particulars, etc. (ret. 11/7/66)
25-66	Notice of Motion filed for an order granting leave to deft. CRABBE to proceed in forma pauperis, etc. (ret. 11/7/66).
0-28-66	Before Bruchhausen, J. - Case called-Adjd. to Jan. 27, 1967.
7-66	Before Mishler, J. - Hearing on motion for deft. CRABBE to proceed in forma pauperis, etc. adjd. to Nov. 14, 1966.
7-66	Before Mishler, J. - Hearing on motion for Bill of Particulars, etc. adjourned to Nov. 14, 1966.
9-66	Stenographers transcript dated Sept. 27, 1966, filed.
0-66	Stenographers transcript dated Sept. 28, 1966, filed.
4-66	Before Mishler, J. - Hearing on motion for Bill of Particulars, etc. adjd. to Nov. 28, 1966.
4-66	Before Mishler, J. - Hearing on motion for deft. CRABBE to proceed in forma pauperis, etc. adjd. to Nov. 28, 1966.
-66	Order of substitution filed substituting attys. for defts. Harold Schwartz Esq., 186 Remsen St.,Brooklyn, N.Y., in place of Eveeroff,Newman & Sonenshin

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DATE	PROCEEDINGS
11-28-66	Governments affidavit in opposition filed.
11-28-66	Govts. Memo of Law filed.
11-28-66	Affidavit of Michael B. Gillen filed.
11-28-66	Before Mishler, J. - Hearing on Motion for Bill of Particulars, et Case called - Motion granted and denied as indicated on consent of the parties - This is the order of the Court, no order need be submitted.
11-28-66	Before Mishler, J. - Hearing on motion granting leave to deft. CRABB to proceed in forma pauperis, etc. Case called - Respectfully refer to the Judge sitting in the Trial Session of Criminal Part, as to th request for trial testimony be furnished without cost to deft.CRABB
12-19-66	Governments Bill of Particulars filed.
12-20-66	Before Mishler J - Case called - Deft. NICHOLAS POTERE and counsel present - Case adjourned to 12-27-66 at 10:00 A.M.
12-20-66	Petitions for Writs of Habeas Corpus Ad Prosequendum as to defts. J MATERA and ANTHONY POLISI filed.
12-20-66	By Rosling J - Writs Issued
12-22-66	Petitions for Writs of Habeas Corpus Ad Prosequendum as to defts. JO FRANZESE & JOSEPH M. FLORIO filed.
12-22-66	By Rosling, J. - Writs Issued. (ret. Jan. 3, 1967).
12-22-66	Stipulation filed substituting as attorneys of record for NICHOLAS POTERE, JAFFE & FELDMAN, Esq., in place of Phillip Vitiello, Esq.
12-22-66	Notice of Appearance filed for deft. NICHOLAS POTERE
12-27-66	Certified Copy of order received from Court of Appeals and filed. On consideration whereof, it is now hereby ordered, adjudged, and decre that a reduction of bail heretofore set by said District Court be an hereby is denied without prejudice to a renewal of motion if there any delay in the prosecution of the trial as to deft. NICHOLAS POTER
12-28-66	Stipulation substitution of Attorneys filed for deft. FRANZESE Maurice Edlebaum 233 Broadway, N.Y.C.
1-3-67	Before Bruchhausen, J. - Case called - All defendants and counsel Government ready for Trial today. Adjd. to Jan. 23, 1967 for Trial.
1-5-67	Writ returned and filed. Executed as to deft. JOHN FRANZESE.
1-5-67	Writ returned and filed. Executed as to deft. ANTHONY POLISI.
1-5-67	Writ returned and filed. Executed as to deft. JOSEPH FLORIO.
1-5-67	Writ returned and filed. Executed as to deft. JOHN MATERA.
1-13-67	Notice of Motion filed for severance pursuant to Rule 14, F.R.C.P.e (ret. 1/23/67)

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DATE	PROCEEDINGS
3-67	Notice of Motion filed pursuant to Rule 16, F.R.C.P , etc. for Discovery and Inspection, (ret. 1/23/67)
16-67	Before Bruchhausen, J. - Case called - Deft. POLISI & COUNSEL present Adjd. to Jan. 17, 1967.
17-67	Before Bruchhausen, J. - Case called - Deft. Anthony Polisi and counsel present - H. Schwartz relieved as attorney for deft. Court assigned Henry Bramwell as counsel. Order signed.
17-67	By Bruchhausen, J. - Order appointing counsel filed. (Henry Bramwell, 90 Utica Ave., Bklyn, NY.) for deft. ANTHONY POLISI
23-67	Before Rosling, J. - Hearing on motion for discovery, etc. Case called - Respectfully referred to Bruchhausen, J.
23-67	Before Bruchhausen, J. - Hearing on above motion, etc. Respectfully referred to Mishler, J.
3-67	Before Mishler, J. - Motion for an order pursuant to Rule 16, F.R.C.P. etc. to produce for examination, etc. Motion argued - Motion granted and denied, as indicated.
3-67	Governments affidavit in opposition to motion for examination, etc. filed.
1-67	Before Rosling, J. - Motion for a severance pursuant to Rule 14, F.R.C.P. etc. Case called - Respectfully referred to Bruchhausen, J.
1-67	Before Bruchhausen, J. - Above motion respectfully referred to Mishler, J.
1-67	Before Mishler, J - Motion for a severance pursuant to Rule 14, F.R.C.P. etc. Motion argued - Motion denied.
1-67	Govt. affidavit in opposition to motion for severance, etc. filed& Memo of
1-67	Before Mishler, J - Oral application for a severance of deft. MESSINEO etc. Motion argued - Motion granted.
1-67	Before Mishler, J. - Case called - Defts. and counsels present - Trial ordered & BEGUN. Selection of Jury commence - Selection of Jury continued to Jan. 24, 1967 at 10:00 A.M.
4-67	Before Mishler, J. - Case called - Defts. and counsels present - Trial resumed - Selection of Jurors continued. Motion by Mr. Henry Bramwell for a severance as to deft. POLISI - Motion granted - All defts. and counsels move for a change of Venue - Motion granted - Trial to be held in the Northern District of New York at Syracuse, N.Y. on Jan. 30,1967. All counsels for defts. move for a mis-trial - Motion granted - Prospective Jurors discharged.
-67	Petition for Writ of Habeas Corpus Ad Prosequendum filed. (JOSEPH FLORIO)
-67	By Mishler, J. - Writ Issued (FLORIO)ret. 1/30/67.

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(See 67 CR-17 Minutes from Northern District of N.Y.)

DATE	PROCEEDINGS
1-25-67	Before Mishler, J. - Case called - Defts. and counsels present - Hearing called for interview of witnesses - Hearing concluded.
1-25-67	By Mishler, J. - Order filed - ORDERED that the trial of this case be and the same hereby is transferred from the Eastern District of New York to the Northern District of New York and it is further ordered that the trial of this case shall commence 10:00 A.M. Monday, Jan. 30, 1967, at the U.S. Court House, Albany, New York.
1-27-67	Writ returned executed and filed as to deft. FLORIO.
1-27-67	Before Bruchhausen, J. - Case called - Adjd. to Mar. 31, 1967. (CORDERO, PARKS & SMITH)
2-10-67	Petition for Writ of Habeas Corpus Ad Prosequendum filed.
2-10-67	By Rayfiel, J. - Writ issued . (ANTHONY POLISI) Original & Certified copies to Marshal. (ret. 2/15/67)
2-17-67	Certified copy of Writ returned & executed. Deft. POLISI delivered to U.S. Marshal at Albany, N.Y.
3-3-67	Steno's transcripts 14 volumes dated Jan. 31 Feb. 2,7,13,14,15,16, 17 20,21,23,24,27 & 28 1967 pages 1 to 4066 filed.
3-7-67	Original papers, photo-copy of docket entries, Clerks Minutes and S#3 cards received from Clerk, U.S. District Court, Northern District of N.Y., Utica, N.Y. (Their File No. 67CR-17).
3-31-67	Before Bruchhausen, J. - Case called - Sentences adjourned to 4/21/67 before Mishler, J., as to defts. CORDERO, PARKS & SMITH.
4-6-67	Notice of Motion filed pursuant to Rule 32(c)(2) F.R.C.P. etc. for disclosure of presentencing investigation, etc. (ret. 4/14/67) (CRA
4-6-67	Notice of Motion filed pursuant to T-28, U.S.C.Sec. 1915(a) for leave to appeal in forma pauperis, ect. (ret. 4/14/67) (CRABBE)
4-7-67	Notice of Motion filed pursuant to Rule 29(c) F.R.C.P. etc. to set aside verdict of guilty as to deft. CRABBE. (ret. 4/14/67)
4-7-67	Memorandum filed in support of deft. motion to set aside the verdict of guilty and enter judgment of acquittal, etc.
4-7-67	Petition for Writ of Habeas Corpus Ad Prosequendum filed. (MATERA)
4-7-67	By Rosling, J. - Writ Issued (MATERA) ret. 4/13/67.
-13-67	Steno's transcripts dated March 1st and March 2nd, 1967 pages 4067 to 4402 filed.
-14-67	Before Mishler, J. - Hearing on motion pursuant to Rule 29(c) F.R.C.P. to set aside guilty verdict against deft. CRABBE, etc. Case called - Motion argued - Motion denied.
-14-67	Before Mishler, J. - Hearing on motion for leave to appeal in forma

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DATE	PROCEEDINGS
	pauperis as to deft. CRABBE, etc. Case called - Motion argued - Motion granted from the Bench.
14-67	By Mishler, J. - Order filed, ORDERED that the deft. William David Crabbe, is granted for leave to appeal in forma pauperis, without pre-payment of fees and costs, etc. (p/c mailed to attys.)
14-67	Before Mishler, J. - Hearing on motion pursuant to Rule 32(c) F.R.C.P. for disclosure to counsel for the deft. CRABBE, contained in the report of the presentence investigation, etc. Case called - Motion argued - Motion granted as far as 4, 5 & 6 of Probation Report.
4-67	Affidavit in opposition filed.
14-67	Affidavit in opposition filed.
14-67	Affidavit in opposition filed.
14-67	Govts. Memorandum of Law filed.
14-67	Before Mishler, J. - Case called - Defts. FRANZESE, CRABBE, FLORIO, POTERE & MATERA & counsels present. Deft. FRANZESE sentenced on count 2 for a period of 25 years pursuant to 18 USC Sec. 4208(a)(2) and to pay a fine of $10,000; on count 4 for a period of 25 years, said period to be consecutively to the term imposed under count 2 and to pay the sum of $10,000; on count 7 for a period of 10 years, to run concurrently with the sentence imposed under counts 2 and 4; on count 8 to be imprisoned for 5 years to run consecutively to the term imposed under count 7 but concurrently with the terms imposed under counts 2 & 4. Deft. CRABBE sentenced on count 7 for a term of imprisonment of 5 years pursuant to Sec. 4208(a)(2) of T-18, USC. On count 8 for a term of 5 years pursuant to Sec. 4208 (a)(2) said terms to run concurrently; Deft. FLORIO sentenced to 15 years imprisonment on count 2 pursuant to 18 USC. Sec. 4208(a)(2); on count 4 for 15 years imprisonment ; on count 7 for 10 years imprisonment; on count 8 for 5 years imprisonment pursuant to 18 USC Sec. 4208(a)(2). All said terms to run concurrently; POTERE sentenced on count 2 for 15 years imprisonment pursuant to Sec. 4208(a)(2) of T-18, USC; on count 4 for a period of 15 years; on count 7 for a period of 10 years; on count 8 for a period of 5 years all pursuant to 18 USC, Sec. 4208(a)(2). All said terms to run concurrently; Deft. MATERA sentenced on count 7 to a term of imprisonment of 5 years; on count 8 for a term of 5 years pursuant to 18 USC, Sec. 4208(a)(2), said terms to run concurrently.
-67	Judgment & Commitment filed for defts. FRANZESE, CRABBE, FLORIO, POTERE & MATERA. Certified copies to Marshal for all.

(over)

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DATE	PROCEEDINGS
4-14-67	Notice of Appeal filed for deft. FRANZESE.
4-14-67	Notice of Appeal filed without payment of fee for deft. CRABBE.
4-17-67	Statement of Docket Entries & duplicate copy of Notice of Appeal mailed to Court of Appeals for deft. FRANZESE.
4-17-67	Statement of Docket Entries & duplicate copy of Notice of Appeal mailed to Court of Appeals for deft. CRABBE.
4-18-67	Notice of Appeal filed for deft. POTERE.
4-18-67	Statement of Docket Entries and duplicate copy of Notice of Appeal mailed to Court of Appeals for deft. POTERE.
4-19-67	Notice of Appeal filed for deft. FLORIO.
4-19-67	Statement of Docket Entries & duplicate copy of Notice of Appeal mailed to Court of Appeals for deft. FLORIO.
4-19-67	Voucher for Compensation and Expenses of Appointed Counsel mailed to Court of Appeals for approval. (CRABBE)
4-21-67	Before Mishler, J. - Case called - Defts. and counsel present - Deft. CORDERO - Imposition of sentence is suspended and deft. is placed on probation on count 1 for 5 years - sentence to run concurrently with sentences imposed under 66CR-307 and 66CR-308. Deft. PARKS -Imposition of sentence is suspended on count 1 and deft. is placed on probation for 5 years - sentences to run concurrently with sentence imposed under under 66 CR-306 and 66CR-308. Deft. SMITH imposition of sentence is suspended and deft. is placed on probation for aperiod of 5 years on count 1. Sentence to run concurrently with sentence imposed under 66 CR-307 and 66CR-308. On motionof Asst. U.S. Attorney Gillen, counts 2,3 4 & 8 are dismissed, as to SMITH, PARKS, CORDERO.
4-21-67	Judgment & Order of Probation filed. Certified copies to Probation. (SMITH, PARKS & CORDERO).
4-27-67	Notice of Appeal filed without payment of fee. (MATERA)
4-27-67	Statement of Docket Entries and duplicate copy of Notice of Appeal mailed to Court of Appeals for deft. MATERA.
4-27-67	By Mishler, J. - Order filed - ORDERED that the deft. MATERA is granted leave to appeal in forma pauperis, without prepayment of fee. (p/c mailed to atty.)
5-2-67	Strenographers transcript dated Jan.30, 1967, filed.
5-16-67	Writ returned and filed. Executed as to deft. MATERA.

(over)

DATE	PROCEEDINGS
3-67	Record on Appeal certified and handed to Jacob Rothman, Esq., for delivery to Court of Appeals, for defts. FRANZESE, CRABBE : MATERA, POTERE & FLORIO
-67	~~Voucher for Expenses forwarded to Court of Appeals for Judge Lumbard's approval (Total $670.21 re James Smith)~~
-67	Acknowledgment received from Court of Appeals for receipt of Record on Appeal re: FRANZESE, CRABBE, MATERA, POTERE & FLORIO.
21-67	Voucher for Compensation and Expenses of Appointed Counsel filed.(SMITH)
6-67	~~Stenographers transcript pages 1 to 379 filed.~~ (dated Jan. 23 and Jan.24, 1967)
17-67	Stenographers transcript dated April 14, 1967 filed. (Pages 1B to 70B)
24-67	Supplemental Record on Appeal mailed to Court of Appeals Pages 4967 to 5415.
30-67	Acknowledgment received from Court of Appeals for supplemental record on Appeal, and filed.
6-68	Notice of Motion filed for an order ordering a new trial in this action, etc. returnable Feb. 5, 1968. (SALVATORE AND ANTHONY POLISI)
-68	Execution Issued to US Marshal, District of Mass. re JOHN "SONNY"FRANZESE.
9-68	Before Dooling, J. - Motion ordering a new trial in this case, etc. Case called - Adjd. to Feb. 19, 1968 on conditions indicated to the Court at 10:00 AM. (SALVATORE & ANTHONY POLISI)
-68	Before Dooling, J. - Motion ordering a new trial in this case, etc. Respectfully referred to Bruchhausen, J.
9-68	Before Bruchhausen, J. - Motion for an order ordering new trial, etc. Case called - Motion adjd. to Mar. 18, 1968 at 10:00 AM., by the court on conditions indicated to the Court.
-68	Government's Affidavit and Memorandum of Law filed (see 65 CR442)
26-68	Certified copy of Judgment and Copy of Opinion received from Court of Appeals affirming the Judgment of this Court, filed.(Judgment refers only to defts. CRABBE & MATERA.)
-68	Execution returned and filed. Unsatisfied - Nulla Bono(FRANZESE)
-68	Notice of Motion filed for an order exonerating the bail bond filed on behalf of deft., FLORIO, etc. (ret. 8/19/68)
-68	Before Judd, J. - Motion for an order exonerating bail bond, etc. Case called. Motion argued. One week for reply papers by U.S. Attorney.
-68	By Judd, J. - Order filed that Stuyvesant Insurance Company, the surety on the aforesaid undertaking of bail for deft.FLORIO, be and he hereby is exonerated. (p/c mailed)

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DATE	PROCEEDINGS
8-26-68	Death Certificate of Deft. FLORIO filed.
1-6-69	Letter dated 12/6/68 received from Chambers of Judge Bruchhausen filed, re counsel for deft. Anthony Polisi, requesting he be relieved, etc.)
1-6-69	By Bruchhausen, J - Memorandum & Order filed that Henry Bramwell be relieved as attorney for deft. ANTHONY POLISI. (p/c mailed)
1-13-69	Voucher for Compensation and Expenses of Appointed Counsel filed. (Anthony Polisi)
4-24-69	Certified copy of Opinion and Judgment filed/received from Supreme Court of the U.S., on Writ of Certiorari as to deft. FRANZESE, vacating the Judgment of the U.S.Court of Appeals and this cause be, and the same is hereby remanded to the U.S. District Court for the Eastern District of New York for further proceedings in conformity with the opinion of this Court. (copies delivered to U.S. Attys. office and Judge Mishler.)
6-19-69	Letter dated June 17, 1969 received from Court of Appeals filed indicating that the mandate (certified copy of judgment and opinion) issued April 25, 1968, should be construed now as also applying to appellants Potere & Joseph M. Florio a/k/a "Whitey". The only appellant for whom the mandate should not be construed as issuing is John Franzese. (JN & USA)
7-3-69	Telephone message received from Judge Mishler Ch J that an informal application made by Atty. Peter Sabbatino for deft. Nicholas Potere to stay the execution of Surrender to and including August 4, 1969 Motion to vacate Judgment of Conviction to be returned on ~~XXX~~ 8-4-69 before Judge Mishler Ch J (Motion papers to be filed) Chief Deputy Marshal Joseph Denson notified.
8-1-69	BEFORE MISHLER CH J - Case called - Deft NICHOLAS POTERE and counsel Peter L. Sabbatino present - Motion to stay the execution of sentence Motion argued - Motion Granted - Surrender stayed until August 18,1969.
8-18-69	Before Mishler, Ch.J. -Motion to vacate the Judgment of Conviction as to deft. NICHOLAS POTERE, etc. Case called - Deft. POTERE & counsel Mr. Peter L. Sabbatino present. Motion adjd to 8/25/69 at 10:00 am before Mishler, Ch.J. (motion papers to be filed)
8-21-69	Notice of Motion filed , ret. 8/25/69 , for reduction of sentence imposed as to deft. NICHOLAS POTERE.
8-25-69	Before Mishler, Ch.J. - Motion for reduction of sentence (Potere) Case called - Deft. POTERE & counsel Mr. Sabbatino present. Motion

DATE	PROCEEDINGS
	argued. Motion denied. Oral application by deft for a stay of surrender, etc. Motion denied.
25-69	Certified copy of Judgment & Commitment returned and filed(deft.Potere) Deft recommitted to Fed.Det. Headquarters.
-3-69	Index to /Record on Appeal received from Court of Appeals , filed. Acknowledgment mailed to Clerk for receipt of same.
-17-69	Notice filed that matter as to deft. JOHN FRANZESE is set down for a hearing on Tuesday, December 23, 1969 pursuant to the Order of the Supreme Court, dated March 24, 1969.(signed by Chief Judge Mishler)
23-69	Copy of letter dated Dec. 22, 1969 from Chief Judge Mishler to U.S. Atty's office and Maurice Edelbaum, Esq., that hearing now set down for Friday, Jan, 16, 1970 at 10:00 am re John Franzese.
16-70	Before Mishler, Ch.J. - Case called - Hearing held. Hearing to be continued on Jan. 30, 1970 at 11:00 am. Oral application by Asst. U.S. Atty. Lombardino to have deft FRANZESE remanded. Motion denied. Bail continued.
26-70	Stenographers transcript dated January 16, 1970 filed.
30-70	Before Mishler, Ch.J. - Criminal cause for hearing, etc. Case called & adjd to Feb. 20, 1970 on consent.
2-70	~~filed~~ Memorandum/that case is scheduled for hearing on Friday, March 20., 1970. (originally scheduled for March 6, 1970)
0-70	Before Mishler, Ch.J - Case called - Hearing resumed from Jan. 16, 1970. Application by Mr. Feitell, counsel for deft. FRANZESE, to adjourn the hearing - Motion denied. Deft. FRANZESE & counsel Lawrence Feitell present. Stipulation read into the record with consent of both sides. Hearing adjd to March 26, 1970 at 10:00 am.
-70	Before Mishler, Ch.J. - Case called - Deft JOHN FRANZESE present with counsel Maurice Edelbaum. Hearing resumed from March 20, 1970.Hearing concluded. The Court signed the Memorandum of Decision from the Bench and ordered the Clerk to have it filed. Pre sentence report marked as Court Ex. 1. Court vacated the final Judgment of Conviction dated April 14, 1967 and a new final judgment was entered Mar. 26, 1967 - Deft remanded. Deft JOHN FRANZESE sentenced to imprisonment on count 2 for a period of 25 years pursuant to 18 USC Sec.4208(a)(2) and to pay a fine of $10,000; on count 4 for a period of 25 years pursuant to 18 USCSec. 4208 (a)(2), said period to be consecutively to the term imposed under count 2 and to pay a fine of $10,000; on count 7 for a period of 10 years, pursuant to 18 USC, Sec. 4208(a)(2);to run concurrently with the sentence imposed under counts 2 and 4; On count 8 for a period of 5 years pursuant to 18

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DATE	PROCEEDINGS
	USC, Sec. 4208(a)(2) to run consecutively to the term imposed under count 7 but concurrently with the terms imposed under counts 2 and 4.
3-26-70	Judgment & Commitment filed, Certified copies to Marshal.(JOHN FRANZES
3-26-70	By Mishler, Ch.J. - Memorandum of Decision filed that final judgment of conviction dated April 14, 1967 be and the same hereby is vacated and a new final judgment of conviction shall be entered. (see above entry for new final judgment) John Franzese)
3-27-70	Certified copy of Judgment & Commitment returned and filed. Deft JOHN FRANZESE delivered to Federal Detention Headquarters. (Original Commitment of April 14, 1967, vacated by the Court)
3-27-70	Stenographers transcript dated March 20, 1970, filed.
4-3-70	Notice of Appeal filed.(John Franzese)
4-3-70	Docket Entries and duplicate copy of Notice of Appeal mailed to C of A (JNr in SA)
4-3-70	Stenographers transcript dated March 26, 1970, filed.
5-26-70	Notice of Motion filed pursuant to Rule 33 of the F.R.C.P. granting de JOHN FRANZESE a new trial, etc. (ret. June 5, 1970) with Memo of Law.
5-27-70	Before Mishler, Ch.J. - Application by Mr. Leone, Asst U.S.Attorney to have bail limits extended to Monticello, N.Y. as to deft Anthony Polisi - Application granted - Deft to return on June 6, 1970
6-5-70	Before Mishler, J. Motion for an order pursuant to rule 33 adj'd to June 19, 1970 at 10:00 A.M. on application of defendant's counsel.
6-19-70	Before MISHLER,J. Motion for an order pursuant to Rule 33 etc. adjd to 6-26-70
6-25-70	Govts. affidavit filed in opposition to defts. motion for a new trial (John Franzese)
6-26-70	Before Mishler, CH. J.- Case called - Motion argued pursuant to Rule for a new trial , etc. Decision Reserved.(JOHN FRANZESE)
6-30-70	By Mishler, Ch.J. - Order filed terminating probation of Deft. RICHARD PAUL PARKS.
7-6-70	~~Index to Record on Appeal received from C of A acknowledgment mailed to the Court of Appeals for receipt of~~
8-12-70	By 1 Mishler, Ch J - Memorandum of Decision & Order Filed Denying Deft's (FRANZESE) Motion for New Trial.
8-21-70	Stenographers transcript dated June 26, 1970 filed.(JOHN FRANZESE)
8-24-70	Notice of Appeal filed(FRANZESE)
8-24-70	Docket entries and duplicate copy of Notice of Appeal mailed to C of

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DATE	PROCEEDINGS
-26-70	Record on Appeal certified and handed to Ronald Fischetti, Esq. of the office of James La Rossa, for delivery to the Court of Appeals.
-27-70	Acknowledgment received from the Court of Appeals for receipt of Index to the Record, and filed.
-1-70	Judgment received from the Court of Appeals filed. Motion of Oct. 22, 1970 to dismiss the appeal of JOHN FRANZESE from the U.S.District Court for the Eastern District of New York for lack of prosecution be and it hereby is granted (JN & USA)
2-71	Letter from deft. POTERE dated 3-8-71 filed.
9-71	Record on Appeal received from the Court of Appeals [illegible]. (Franzese)
0-71	Certified copy of Judgment & Copy of Opinion received from the Court of Appeals affirming the Judgment of this Court filed. (John Franzese) JN & USA)
-71	Certified copy of Judgment received from the C of A denying defts petition for Writ of Certiorari (John Franzese)
16-71	By Mishler, Ch.J. - Order for the issuance of a Bench Warrant filed (John Joseph Cordero)
-71	Bench Warrant Issued (Cordero)
-71	Before Mishler, Ch.J. - Case called - On motion of Asst US Atty Boyd the Indictment is dismissed as to defts. ANTHONY POLISI & ANNE MESSINEO.Motion granted.
71	By Mishler, Ch.J. - Order of Dismisaal filed (ANTHONY POLISI & MESSINEO)
-71	Letter from Potere filed ltr 9-22-71 [illegible]
-71	Before MISHLER, CH.J. - Case [illegible] motion for reduction of sentence submitted (John Franzese)
71	Affidavit of Dennis E Dillon filed
-71	By Mishler, Ch.J. - Memorandum & Decision & Order filed denying defts [illegible] for reduction of sentence (John Franzese)
-71	Letter from deft Potere to Judge Mishler dtd 11-2-71 filed (received from Chambers)
-71	By Mishler, Ch.J. Order filed denying deft. Potere's motion [illegible] # on Currency etc. (copy to defts)
71	Letter & Motion filed - ltr 6/16/71 [illegible] (John Franzese)
-72	Before MISHLER, CH.J. - Case called, on deft JOHN FRANZESE's motion for a new trial based on newly discovered evidence. Adjourned to 7-7-72 at 10 a.m.

continued

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66CR-161
CRIMINAL DOCKET

DATE	PROCEEDINGS
7-7-72	Before MISHLER, CH.J. - Case called. Motion by JOHN FRANZESE for a new trial based on newly discovered evidence argued. Decision reserved.
7-7-72	Letter by JAMES JOSEPH SMITH filed.
7-7-72	Affidavit of James Mosely filed.
7-19-72	Letter dated 7-11-72 filed from counsel E. Taikeff re John Franzese (received from chambers).
7/26/72	Stenographers transcript dated 1/1/72 filed
9-11-72	Letter dated 7-28-72 from Elliot A. Taikeff received from chambers & filed advising Judge Mishler of availability in September or October.
9-11-72	Supplemental affidavits in connection with motion for a new trial filed.
9-11-72	Govt's reply brief in opposition to deft's motion for a new trial filed.
9-20-72	By MISHLER, CH.J.- Order filed denying motion by JOHN FRANZESE for a retrial.
9-29-72	Notice of Appeal filed (deft John Sonny Franzese on denial for a New trial, etc.
9-29-72	Docket entries and duplicate of Notice of Appeal mailed to C of A.
12/12/72	Notice of Motion filed requesting an order of dismissal of the appeal of deft JOHN FRANZESE issued returnable 1/2/73
12/12/72	Affidavit in support of motion to dismiss appellant's appeal filed.
1/26/73	Stenographer's transcript (Govts response to papers submitted by EUGENE LUPO)filed (John FRANZESE)
2/5/73	Order filed from the C. of A. - It is hereby ordered that the motion made herein by counsel of the appellee by notice of motion dated 12/8/73 , to dismiss the appeal from the U.S. District Court for the EDNY for lack of prosecution be and it is hereby granted. (JN)
3/13/73	2 Affidavits filed (JOHN FRANZESE).
3/25/74	By MISHLER, CH.J.- Report and order terminating probation prior to original expiration date filed(JAMES JOSEPH SMITH)
11-22-74	Notice of Motion filed, ret. 12-6-74, as to deft CRABBE for an order directing that defts sentence imposed on 4-14-67 be suspended or directing that he serve 6 months of said sentence and remainder of sentence be suspended, pursuant to 18 3651 etc.
12/6/74	Before MISHLER, CH.J.- Case called-Motion directing that deft's sentence be suspended argued- decision reserved (CRABBE)
6/6/75	Copy of order committing deft Cordero for examination retd and filed- executed (note that caption relates to pseudonym of deft) that being John Conte

DATE	PROCEEDINGS
/74	By MISHLER,CHJ.- Order filed commiting deft Cordero for study filed (caption reading John Conte pseudonym for deft Cordero)
31-75	~~Xxxxhxx~~ Stenographers transcript filed dated Jan. 23, 1967
4-75	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft for granting of probation etc. (WILLIAM CRABBE)
/75	Notice of motion for reduction of sentence filed (MATERA)
19/75	Supplemental affidavit of Michael Coiro filed (MATERA)
22-75	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft MATERA for reduction of sentence imposed.
	Letter filed dated May 22, 1975 from Chief Judge Mishler, to Ernest Moore, Acting Regional Director , Bureau of Prisons; letter from Ch.Judge Mishler to Hon. Normal Carlson, U.S.Justice Dept.Washington,DC.
	Pre sentence report etc. all received from Chambers.
11/75	Notice of motion for an order granting a furlough for deft Franzese, etc. ret. 6/13/75 at 9:30 A.M.
3/75	Govt's memorandum response to deft's motion requesting a furlough filed
6/75	By MISHLER, CH.J.- Memorandum of Decision and Order filed that motion to dec deft Cordero, in violation of terms of probation are dismissed
6/75	By MISHLER, CH.J.- Memorandum of Decision and Order filed that motion by deft Franzese for furlough is denied
0/75	Letter from Bureau of Prisons dated 6/25/75 filed (MATERA) copy

DOCKET SHEET (65 CR443)

25a

Form No. 100

CRIMINAL DOCKET

65CR 443

CLOSED

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	FOR DEFT. SMITH
vs.	Court appointed counsel
JOHN JOSEPH CORDERO	A.F.Marra of Legal Aid
JAMES JOSEPH SMITH	
RICHARD PAUL PARKS a/k/a Richie	For Deft. - CORDERO
ANNE MESSINEO a/k/a Anne the Singer	Court Appointed Counsel
	Rudolph DiBlasi
	16 Court St. Bklyn, N.Y.
	875-2450

ABSTRACT OF COSTS	AMOUNT
Fine,	
Clerk,	
Marshal,	
Attorney,	
Commissioner's Court,	
Witnesses,	

CASH RECEIPTS

DATE	NAME	RECEIVED	DISBURSED

DATE	PROCEEDINGS
10-8-65	Indictment filed - Bench Warrant ordered for ANNE MESSINEO
10-8-65	Bench Warrant Issued as to ANNE MESSINEO
10-8-65	Notice of Appearance filed for defendant ANNE MESSINEO
10-8-65	Bench Warrant returned executed and filed (MESSINEO)
10-8-65	Before Zavatt Ch J - Defendant Anne Messineo and counsel present - Deft. brought into court on Bench Warrant - Bail fixed at $5,000.00.
10-14-65	By Zavatt Ch J - Order appointing counsel for defendant SMITH filed.
10-14-65	By Zavatt Ch J - Order appointing counsel for defendant CORDERO
10-14-65	Notice of Appearance filed for defendant PARKS.
10-14-65	Before Zavatt Ch J - Defendants and counsel present - Defendants arraigned and each plea not guilty - Bail reduced to $20,000.00 as to defendants CORDERO, SMITH and PARKS. - Bail continued as to deft. MESSINEO
	Case placed on General Calendar.

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65CR 443

DATE	PROCEEDINGS
0-20-65	Comm. Abruzzo's papers (Filed 10-19-65) transferred to Criminal File
1-16-65	Notice of Motion of Alfred E. Santangelo for an order pursuant to Rule 41(e) to suppress all evidence etc. , returnable 11-22-65 filed.
1-22-6	Affidavit in opposition to defendant MESSINEO motion filed.
1-22-65	Before Abruzzo J. Motion for an order suppressing evidence etc., of defen MESSINEO , Respectfully referred to Criminal Part I Judge.
-3-66	Before Bruchhausen J - Defendants and counsels present - Case marked ready subject to 65-CR-442 and 65-CR-474 - Defts. SMITH, PARKS & CORDERO in cust
5-66	By Bruchhausen J - Order filed , Ordered that the U. S. Marshal be and he hereby is directed to take RICHARD PAUL PARKS on January 14,1966 at 11:00 A.M. to Marriage License Bureau, Municipal Building, Centre and Chambers St New York for the purpose of applying for a marriage license, and ORDERED that the Marshal is directed again to take defendant RICHARD PAUL PARKS to the City Clerk, Municipal Building, Manhattan for the purpose of performaning of a wedding ceremony between said defendant. P/C/ mailed.
10-66	Before Bruchhausen J - Case called - Defendants and counsels - Case marke ready and passed to 2:30 p.m. 65-CR-442
2-66	By Bruchhausen J - Order filed, Ordered that the U.S.Marshal be and he her is directed to take defendant RICHARD PAUL PARKS to the Chambers of Hon. Abraham Scholman Judge of the Civil Court of Kings County, at a time to be arranged by said Marshal with said Judge for the purpose of the performanc of a wedding ceremony between said defendant and Theresa La Roma and then return the said defendant RICHARD PAUL PARKS to the Federal House of Deten tion 427 West St. New York City. P/Cs mailed.
11-66	Certified copy of order returned executed and filed.
15-66	See Steno's minutes dated October 5, 1965 filed in 65-CR-442
21-67	Before Mishler, J. - Case called - Defts. and counsels present - On motion of Asst. U.S. Attorney Gillen, the indictment is dismissed as to defts. SMITH, PARKS & CORDERO.
21-67	By Mishler, J. - Order of dismissal filed as to defts. SMITH, PARKS & CORDERO.
7-67	Voucher for Compensation and Expenses of Appointed Counsel filed(SMITH)
26 1968	BEFORE RAYFIEL, J. Case Called - On motion of Asst U.S. Atty. Steinmann the Indictment is dismissed as to deft ANNE MESSINEO. Motion granted.
26-68	By Rayfiel, J. - Order of Dismissal filed as to ANNE MESSINEO.

NOTICE OF MOTION AND AFFIDAVITS (Filed September 29, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

74 C 1575

----------X

UNITED STATES OF AMERICA :

-against- : Criminal No. 66 Cr 161

JOHN FRANZESE, et al., : NOTICE OF MOTION

Defendants. :

----------X

S I R S :

PLEASE TAKE NOTICE, that upon the annexed affidavit of Charles Zaher, duly sworn on the 17th day of September, 1975, and the affidavit of Michael B. Pollack, duly sworn on the 26th day of September, 1975, and the affidavit of Thomas Matteo, duly sworn to on the 22nd day of September, 1975, and the affidavit of Eleanor Cordero previously filed, and other new evidence, a motion will be made before this Court, located at 225 Cadman Plaza East, Brooklyn, New York, on the 7th day of October, 1975, or as soon thereafter as counsel may be heard, for an order pursuant to Title 28 of the United States Code, Section 2255, setting aside the judgment of conviction rendered April 17, 1967, convicting the defendant, JOHN FRANZESE, of violations of Title 18 U.S.C. 2113 (d) and 2, and Title 18 U.S.C. 2113 (c) and 2, and Title 18 U.S.C. 371 and 2; and for a further order dismissing the indictment herein, or in

the alternative, granting a new trial and for such other and further relief as to the Court may seem just and proper. Upon false and perjurious testimony, as affirmed by the affidavits and other new evidence herein.

New York, New York
, 1975

Yours, etc.,

MICHAEL B. POLLACK
Attorney for Defendant
John Franzese
1345 Avenue of the Americas
New York, New York 10007
(212) 247-3720

TO:

CLERK
United States District Court
Eastern District of New York

DAVID G. TRAGER
United States Attorney
Eastern District of New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-v- : 66 Cr 161

JOHN FRANZESE, :

Defendant.:

----------x

STATE OF NEW YORK, COUNTY OF NEW YORK): ss.:

CHARLES E. ZAHER, JR., being duly sworn, deposes and says:

1. I am the same individual who testified for the United States Government in February 1967 in the prosecution of John Franzese, 66 Cr 161.

2. At that trial, I testified to having met John Franzese in November of 1964, at the Crystal Room at Crescent and Fulton Street in Queens, New York. Tr. p.1453.

3. I further testified that I met with John Franzese at the Aqueduct Motor Inn on July 21, 1965 to discuss the plans for future robberies Parks, Cordero, Smith and I were to commit. Tr. p.1462.

4. The first time I ever saw John Franzese personally was when I walked into the Courtroom in Albany, New York to testify in the above proceeding. I identified John Franzese for purposes of gaining the indictment from a picture shown me in the Grand Jury. Richard Parks had told me Franzese had a large neck and resembled Bruno Sammartino, a professional wrestler.

5. I was arrested by agents of the Federal Bureau of Investigation on October 8, 1965 for bank robbery. I had taken

part in the robbery of the Queens Central Bank on July 7, 1965 and the Jamaica Savings Bank on July 13, 1965. My part in these robberies was in stealing the getaway car and driving the car from the scene of the robbery.

6. I testified at the trial I did not take part in any of the robberies after July 13, 1965 because Richard Parks had communicated to me Anthony Polisi's intention to have me murdered. Tr. p.1551. This testimony was not true. I ceased robbing banks because the risk of capture and a long prison term were far too great when weighed against the small amounts of money we got in the two robberies I had taken part in. Quite simply, there were easier and less dangerous ways to earn money illegally. I further testified I approached Anthony Polisi with Regina Parks, the sister of Richard Parks, after Richard Parks was arrested to gain money from him toward bail. I stated I was no longer afraid of Polisi hurting me because his gunmen (Parks, Cordero and Smith) were in jail. My trial testimony was fabricated along these lines so as to be consistent with my stated reason for leaving the conspiracy. The testimony was not true -- I approached Polisi because the family of Richard Parks told me that Parks had told them Polisi had borrowed $1,000 from Richard Parks and he wanted to apply this money towards bail. It is logically inconsistent to believe that my co-conspirators would frighten me if John Franzese was the boss of these robberies (Tr.p.1677) and the testimony given at the trial regarding his penchant for violence was true.

7. The extent of punishment I was susceptible to became clear to me on the evening of October 8, 1965 when I was booked

at the Federal House of Detention at West Street. When I was being booked in, a corrections officer said, "Here comes another member of the Parks Gang." I told this to Richard Parks when I saw him the next day in the jail and he told me he was aware that he was the heavy in the case as it presently stood, in fact he stated his lawyer had so informed him, and that he would have to see about putting someone else in to take the heat. He further told me John Cordero had already cracked and made a statement to the authorities implicating Anthony and Salvatore Polisi.

8. Over the next few days, I was informed that John Cordero had implicated the Polisis as the masterminds of our bank robberies and I was pressured into going along with this as a way of gaining consideration for myself in terms of time in jail. I was liable for at least 50 years in jail for my participation in two robberies and my three co-conspirators were liable for in excess of 100 years, or a virtual life sentence, for the seven robberies they committed. At the time the logic of this course of conduct seemed obvious and I agreed to go along with the story.

9. Richard Parks told me to tell the authorities the basic story of my involvement in the robberies, however to minimize my own role, and to state that we stayed at the Aqueduct Motel the night before the robbery rather than the Kew Motor Inn in an attempt to further implicate Anthony Polisi, and that Salvatore Polisi helped rob the cars and participated in the robberies and Anthony Polisi organized the robbery team and supplied us with diagrams of the banks to be robbed.

10. During these discussions between ourselves and in front of me with prosecutors and agents, John Cordero steadfastly maintained he would not testify unless charges against his wife were dismissed. My co-conspirators then decided to implicate "Annie the Singer" as the driver of the cars in the robberies after I left the conspiracy. I was present during these discussions but did not actively participate because I had no knowledge of the facts being discussed. Parks, Cordero and Smith knew that a woman had been implicated by an informant and they decided to implicate Annie the Singer rather than Carol Scalzo because she more closely fit the description of the woman driver given by the informants in the affidavit in support of the arrest warrant.

11. During preparation of our testimony for the Polisi Trial, we had a discussion with F.B.I. agents in the prosecutor's office. During this conversation, we were told the F.B.I. was taking pictures of the activity at the Aqueduct Motel. The agents then began to ask us if we know certain people. The name Sonny Franzese was mentioned, "Do you know Sonny Franzese?" I remained silent; Parks, Smith and Cordero said they did. The agents asked do you know anything of his activities, and Parks and Smith answered no; - Cordero asked, "What's in it for me?" Special Agent Thatcher answered, "Boy, Hoover would give his left nut for Sonny Franzese". The conversation continued along the lines of our knowledge of the activities of other persons. There was no further mention of Sonny Franzese at that time. Later that night when we were returned to West Street, Cordero got very excited, "Did you hear what Thatcher said, "Hoover would give his left nut for Sonny?" We could get a suspended sentence if

we could get something on Franzese." Smith and Parks responded, "You're crazy, you'll get us all killed if we put Sonny on something." I said, "What can we put him on?" First Cordero suggested involving Sonny Franzese in a coin robbery they were involved in on Long Island. This was rejected because I hadn't taken part in the robbery and my lack of knowledge was dangerous should I be questioned closely about it. We next discussed and rejected an idea to implicate Sonny in an armored car robbery in Yonkers, but rejected this because we didn't know the intimate details of this situation. The information was being given to John Cordero by another inmate about a score he had planned but never made. It was finally decided to implicate Sonny Franzese in a situation we knew about, the bank robberies.

12. The initial hurdle we had to overcome was to explain in a plausible manner, why someone of Sonny Franzese's supposed importance would choose to meet with four cowboys like ourselves. We decided to link this meeting to an event the prosecutor could verify and such event would explain the necessity of a meeting. We chose the incident where John Cordero fired shots at Whitey Florio in the parking lot of the Kew Motor Inn because we knew the F.B.I. had already been told of the shooting and we believed there had been a police report on the incident. The fact that Florio was involved, and that he had always bragged about his relationship with Sonny Franzese to each of us proved a perfect vehicle for us to allege Franzese summoned us to a meeting at which we explained to him our frustration at the small amounts of money our two bank robberies had netted us. This

course was necessary to explain how a person we had heard was a high level organized crime figure came to have a meeting with we four.

13. We continued to discuss changing our testimony to make Sonny Franzese the leader of our bank robbery escapades. The more we discussed this, the more different stories we tried, the better our story began to sound. Cordero, was the initial leader of this effort. He continually exhorted me by telling me without no doubt, Charley, you'll get a suspended sentence, we three with all the banks we robbed, we should get time served, three years at the most. This was fortified when on one occasion, we were taken through the Marshal's Office which contained a chart with Sonny Franzese's picture on it listing him as the underboss in the Colombo Family. This, Thatcher's statement and Cordero convinced me Sonny Franzese was sufficiently important to law enforcement to make them rally fully behind us at time of sentencing.

14. We decided we would have to explain why we had not identified Sonny Franzese initially as the mastermind of the robberies. From our past experiences with the law, especially Cordero's knowledge of the difference between conspiracy in the Federal and State Courts, we ascertained that our word alone, uncorroborated, would be sufficient to gain a conviction, if believed. We decided to say we were afraid and that therefore we had avoided testifying against him. We also discussed the fact that we did not believe Sonny Franzese would take the stand to refute our testimony. This failure, we felt, would insulate us from perjury charges being levied against us. We were told by the agents that Sonny was discharged from the service for homicidal tendencies, they characterized him as a "mad hatter" who had

killed or ordered the killing of 300 persons.

15. The decision of what other persons to name as being present at the meeting of July 21, 1965 at the Aqueduct Motel was made by naming every person we know to be a racketeer who hung out at the Club Luau and who we believed was associated with Sonny Franzese.

16. During the discussions about our testimony, John Cordero mentioned that he was considering hiring someone, I believe his name was Weldon, to kill Eleaner's daughter, Stephanie, and therefore further reinforce the element of fear we intended to rely on as explanation of our previously given testimony.

17. While in jail waiting to testify against Sonny Franzese my three co-defendants, Smith, Parks, and Cordero, began talking to authorities from Queens County about the murder of Ernie Rupoli. Intense pressure was being brought on me by Richard Parks to corroborate portions of his story and to implicate Thomas Matteo, a boyhood friend of mine. In an effort to apprise Matteo of the situation I was in, I smuggled two letters out of jail through my wife Anne, informing Matteo that he had a simple choice, join in the frame of Sonny or else I'd have to frame him in the Rupoli murder trial.

18/ My wife told me that she showed the letter to Thomas Matteo in Forest Park, Queens. She told me Matteo would not join with us in testifying and said he'd do an extra five years on account of me. I remember this because Richie Parks and I joked about this while incarcerated in Danbury waiting to testify and I recounted this jesting to my wife in a letter from the prison.

19. Shortly after I was released from prison I went to see Maurice Edelbaum. I told Mr. Edelbaum I had lied at the trial and wished to recant my testimony. Mr. Edelbaum treated me with deep suspicion and hurried me out of his office.

20. I have maintained steady employment with the same concern for the past six years. Last year between basic salary and overtime pay I earned over $20,000. I am aware that the publicity that this recantation will generate may cause me to lose my job. However, the Court must understand that this affidavit is given of my own free will and has not been solicited nor have I been promised any form of remuneration by any person for giving this affidavit. Ten years of living a lie is long enough, John Franzese is incarcerated today because he wasasufficiently important enough target to law enforcement to cause them to seek leniency for myself if I testified against John Franzese. Being a weak person, strung out on narcotics, this was a powerful inducement for me to join my three co-defendants in fabricating Franzese's involvement with us.

Charles E Zaher

CHARLES E. ZAHER

Swom to before me this

19th day of September 1975.

Margrione W El

MARGRIONE W. EL
Notary Public, State of New York
No. 4526372
Qualified in New York County
Commission Expires March 30, 19.76

Dated:

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JOHN FRANZESE,

Defendant.

66 Cr 161

STATE OF NEW YORK, COUNTY OF NEW YORK) ss.:

MICHAEL B. POLLACK, being duly sworn, deposes and says:

1) I am the attorney, for the purposes of this motion, for John Franzese, one of the defendants convicted herein. I am familiar with the facts of this case having read the trial transcript, pre-trial motion papers, post-trial motion papers and having detailed discussions about the facts of the case with several persons connected with the case.

2) The defendant, John Franzese, movew to vacate the judgment and commitment dated April 17, 1967, on the ground that the conviction was obtained on false and perjurious testimony.

3) I have spoken to Charles Zaher at great length concerning his desire to recant his testimony. Mr. Zaher has apprised me that immediately following his arrest on October 8, 1965, he met Richard Parks, James Smith and John Cordero in the Federal detention facility at West Street, New York, N.Y. They were already scheming of a way to lessen law enforcement's interest in them by naming someone else as the "boss" of their bank robbery activities. Mr. Zaher told me how several different stories

were discussed, as a means of establishing a hierarchical chain of command to their bank robbery activities. Such a plan was conceived to obtain a bargaining position with federal authorities to gain leniency for themselves. During the period of their planning the four robbers reached the conclusion that John Franzese was the person law enforcement was most interested in. Several stories implicating John Franzese in criminal conduct were discussed, and rejected for one reason or another. Finally, they hit upon a story the four of them felt the authorities would accept. Mr. Zaher indicates by his stated concern about perjury charges that the four witnesses were more concerned about the authorities inability to disprove their allegations than they were with law enforcement's ability to corroborate their story. The fact that many stories were told and rejected is confirmed by the prosecutor's statement on page 1753 of the trial transcript, "I don't think I even took any notes at the time, Your Honor, because these individuals, at the time, were telling us all kinds of things in West Street, ...". Mr. Zaher further informed me that this fabrication took place over the entire time of his pre-trial detention at West Street, Nassau County Jail and the Federal House of Detention, Danbury, Connecticut.

4) During the period of pre-trial incarceration at the prison in Danbury, Connecticut, Charles Zaher wrote two letters to Thomas Matteo, a boyhood friend, and had them delivered to Matteo by Zaher's wife, Ann. The reason these letters were smuggled from the jail rather than mailed was because of their content. He was telling his friend, in the spring of 1966, that

he was facing severe pressure from his cohorts in jail to implicate Matteo in a murder indictment. Matteo was informed that such pressure had caused Zaher to frame Tony Polisi and "this guy Sonny to". Zaher further stated he didn't mind testifying falsely against people he didn't know, but it bothered him to testify against those he knew. Zaher subsequently wrote a letter to his wife, dated June 15, 1966, in which he refers to the letter to Thomas Matteo and states how Zaher and Richie Parks were laughing at Matteo's response, "he'd do an extra five years because of Charlie".

5) Zaher's memory of the two letters to Matteo and their contents closely corresponds to the sequence of events and his conduct during the investigation by the Queens District Attorney's Office. During the trial of John Franzese, and Thomas Matteo in Queens Supreme Court, Charles Zaher testified he first spoke with Det. Price about the Rupoli murder in June, 1966, a date which corresponds with the letter to his wife. T.Tr. 216,217. He further testified at the murder trial of Franzese and Matteo, that in his Grand Jury Appearance of September 23, 1966, Zaher did not implicate Thomas Matteo in the murder of Ernie Rupoli. T.Tr.263. Zaher first mentioned Matteo subsequent to the indictment, in an interview with Detective Price in November of 1966. T.Tr. 248,279.

6) Charles Zaher States that John Cordero was very concerned that the witnesses be able to substantiate their fear of John Franzese as a way of explaining their failure to implicate Franzese initially in the conspiracy. Zaher states that

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Cordero went so far as to talk to another inmate about killing Eleanor Cordero's child, Stephanie. This would not be the only incident where Cordero manufactured elements of fear to satisfy his own ends. The following statement was taken from an FBI report and corroborates Zaher when he alleges John Cordero was attempting to establish an element of fear to justify his previous testimony.

> "On February 7, 1966, Assistant United States Attorney Michael J. Gillen, Eastern District of New York, Brooklyn, New York, advised that he had dismissed the complaint filed on November 12, 1965 charging Thomas Zummo, Federal Bureau of Investigation (F.B.I.) #584 484D with violation of 18 U.S.C. §1503 and 2. Assistant United States Attorney Michael J. Gillen advised that he dismissed the complaint against Thomas Zummo for violation of obstruction of justice on the following grounds. Assistant United States Attorney Gillen was not convinced that threats allegedly made by Zummo to Mrs. John Cordero took place and that the Cordero's manufactured this incident to satisfy their own ends."

The two incidents establish further Corderds knowledge of the rules of evidence and his willingness to manipulate events to justify his conduct and make those rules work to bring about the goals he desired.

7) I spoke to Maurice Edelbaum, trial attorney for John Franzese in July of 1975. Mr. Edelbaum informed me that Mr. Zaher had in fact been in to see him in 1968 or 1969 and stated he wanted to recant his testimony. Mr. Edelbaum was deeply suspicious of Zaher and his possible motivation and advised his client not to talk to Mr. Zaher.

8) Charles Zaher states that he never met or saw John Franzese until he walked into Court to testify. He states

he identified M . Franzese from a picture shown him in the Grand Jury, after being told by Richard Parks that Franzese had a large neck and resembled the wrestler Bruno Sammartino. In Albany Zaher identifies Franzese in the following manner.

A Right there, right next to his counsel.

THE COURT: Will you stand, Mr. Franzese, please.

(The defendant John Franzese then stands in the courtroom.)

THE COURT: Is that the man you pointed to?

THE WITNESS: Yes.

THE COURT: Let the records show that this witness pointed out the defendant John Franzese.

T.Tr.1450

Nowhere in the record can counsel determine how Charlie Zaher could have known Maurice Edelbaum was the attorney for John Franzese unless told by a person who knew or who had been in the courtroom.

9) Charles Zaher stated in his trial testimony that he went to Anthony Polisi to get bail money for Richard Parks. The import of this testimony was that Polisi had an obligation to provide Parks bail money because of his role as Parks' superior in the bank robbery gang. However, Zaher now states he went to Polisi after being told by members of Richard Parks' family that Polisi owed Parks money and not because of some underlying obligation on Polisi's part to provide bail money.

Zaher testified Polisi gave him $200. Zaher's statement now of why he went to Polisi is confirmed by the trial testimony of Julius Itzkowitz, the attorney for Richard Parks who testified Parks told him Polisi owed Parks $1,000 but had made one repayment and now owed Parks $800. T.Tr.2654. This money was obviously the repayment of a debt and not some obligation on the part of a higher-up to provide bail money as per a prior agreement.

10) Based upon conversations with Charles Zaher, I contacted Anne Zaher concerning any documentation she might have for her husband's recantation. Initially, I was informed by Mrs. Zaher that such corroboration did exist but she could not locate the documents. Subsequently, I spoke with Mrs. Zaher on the phone in early August, 1975. I was informed that Mrs. Zaher had a letter written by her husband to Thomas Matteo in which Matteo was informed that he could join the frame of Sonny Franzese or be included in the indictment charging the defendants with the murder of Ernie Rupoli. She asked if I would return a tape recording of a telephone conversation between Mrs. Zaher and Mrs. Franzese, which Mrs. Franzese had made. I said I would gladly return the tape in exchange for the letter. Shortly thereafter, Mrs. Zaher called me again and stated she had shown the letter to a friend who had given Mrs. Zaher their opinion that the letter had a higher exchange value than a taped conversation. An appointment was set up for 10:00 a.m., Monday, August 25, 1975 in the office of Mr. Zaher's attorney. At this meeting Mrs. Zaher stated she wanted $100,000 for the letter, she wanted $40,000 for one daughter, $40,000 for her second daughter and $20,000 for she and her husband. I objected, saying her husband had never asked for any

money - she agreed with this but stated she wanted him to have some anyway. I responded to the effect that he was a big boy and if he wanted money he could ask and that minus that any money given would be pursuant to conditions precedent she had set for the production of the document. Mrs. Zaher then produced a letter, which she claimed, was the letter written by her husband but in her handwriting. That letter said:

"Hi Tom,

I hope by now you got some sense and listen to Ann. Richie is going to testify against you and they want me to. You see how we framed this guy Tony, and I have to go along with the guys to frame this guy Sonny to. For these fucking Bank robberies. I should of stayed robbing the cars with you at least there was more money in it. How are you doing Ann told me she gave you my keys. Do you still have the garage. Tony they really have me squeezed in I tryed to bug out but I didn't make it. I don't mind testifying atainst guys I don't know but you are a different story. If you go along with us I will have no choice. Listen to Ann she will run down the story to you. I hope you do the right thing.

Blackie"

Mrs. Zaher stated she had the original letter in a safe deposit vault and would not allow me to see it. After further discussion she agreed to my seeing the letter if my client paid her $1,500 for the privilege. I was also shown a letter dated June 15, 1966 which Mrs. Zaher said had been sent to her by her husband from Danbury. In that letter Charles Zaher wrote his wife regarding Thomas Matteo, "Richie yells down to me, <u>So he would do an extra five years for you.</u> Thats what he told you when you gave him that letter." After further conversation Ann Zaher agreed to allow me to see the original letter without paying any money. During the week of September 1, 1975 I met Ann Zaher at a European-American Bank at Jamaica and Pennsylvania Avenues, Brooklyn, New York.

At that time I saw Ann Zaher enter a safe deposit vault and exit carrying a ring case. She opened this and took out a letter which was folded over many times. This paper contained a letter, the contents of which were the same as shown me by Ann Zaher on August 25, 1975 and quoted above. Mrs. Zaher also showed me three letters which she said were from her husband for comparison purposes. These documents certainly appeared to me, as a lay witness, to be in the same handwriting of the letter in the safe deposit vault. Ann Zaher showed me certain spelling mistakes in the letter and told me it was pressed into her hand by her husband when she greeted him at Danbury. Mrs.Zaher stated she showed this letter to Thomas Matteo in Forest Park by the Carousel. Matteo was with Tyler Sommers, who did not read the letter. After reading the letter Matteo returned it to Ann Zaher. This letter remained in Ann Zaher's possession from that date until the present. During conversations Ann Zaher informed me that during the trial of John Franzese and Thomas Matteo in Queens, New York, she received a call from a man who identified himself as Mr. Kleinman, attorney for Thomas Matteo, and asked her to come forward with the letter informing Matteo he was going to be "framed." Ann Zaher declined to make the letter available to the defense but told Mr. Kleinman she would produce the letter if Matteo was convicted.

Shortly after I read the letter Mrs. Zaher returned to the vault, with the stated intention of returning the letter to the vault, and then we exited the bank together. We next

entered Mrs. Zaher's car and continued our discussion about the letter and Mrs. Zaher's price for production of the letter. Mrs. Zaher wanted to use the money to buy a gift and card shop. Mrs. Zaher was aware that any price which could be agreed upon would have to be made known to the Court. Mrs. Zaher was asked if she would put the letter in a vault with money and then present her demands to the Court for prior approval. She rejected this stating "Judge Mishler would force me to produce the letter or go to jail." She therefore demanded the money, and wanted it sufficiently in advance of our motion being filed so as to allow her to disburse the funds beyond the Court's reach. During this and subsequent conversations, Mrs. Zaher had repeatedly told me that if Mr. Franzese refused to meet her demands she would destroy the letter and forget about any involvement in her husband's efforts to rectify a lie told ten years ago.

11) I have spoken to Eleanor Cordero on several occasions beginning in the spring of 1975. Mrs. Cordero has steadfastly maintained to me that she and not Anne Messineo took part in the robberies committed by John Cordero, James Smith and Richard Parks. She also reaffirmed her previous affidavit concerning the use of two stolen cars in the robbery of August 13, 1965. She has stated to me the reason for this deviation from previous procedures was necessitated by the fact that Richard Parks' car had broken down and therefore could not be used. She further stated that she and John Cordero loaned Parks their car for the weekend after their wedding. There has never been an explanation of this extra car but there are mentions of it at

the trial. John Cordero gave an interview to agents of the FBI in which he said his "wife Eleanor drove one of the three switch cars during the robbery." (emphasis added) T.Tr.2001. Subsequently, Richard Parks testified about the same robbery in which an unexplained car again is mentioned. Again Parks attributed this car to Anne Messineo in the following manner:

Q. Where did Annie go?

A. She got out of the automobile and started walking toward the corner, which wasn't very far off.

Q. Where did she leave the automobile?

A. Right there.

Q. Parked along the curb?

A. Yes, that is correct. It was parked.

Q. So all three of you got out of the car together?

A. That is right.

Q. And you two got into the Ford of yours?

A. That is right, with the shopping bag, with the money in it, and the pistols and the wig and the kerchief.

Q. And where did Annie go?

A. She started walking toward the corner where she had her automobile parked.

Q. You knew that?

A. Yes, that is right.

Q. What kind of automobile was it?

A. She had -- well, are you talking about the automobile she had there that day, sir?

Q. Yes.

A. I didn't see her automobile that day. But I know what type of car she has, but her car I didn't see, because we got in my car and we drove off. We had left when she started walking.

Q. So you didn't see another car?

A. No sir, I did not.

Q. Do you know when she had placed that car there?

A. Yes, I was told it was put there the night before.

Q. The night before? Wasn't it the night before that you went casing the bank?

A. No sir. I believe I said it was one or two nights before, her car was put there -- I was told the night before the robbery -- but the casing of the bank took place approximately two days prior to the actual bank robbery.

Q. Was it one or two days after?

A. I would say it was two days.

12) Eleanor Cordero informed me on September 11, 1975 at my office that in 1966 she drove to Danbury with Ann Zaher. She observed Ann Zaher being given a letter by her husband

against prison regulations and Ann Zaher smuggled it out of the prison. In the car on the way home Anne Zaher, the passenger, read the letter. On the way home the car ran out of gas on the Bronx Whitestone Bridge. When they rolled into a station for gas, Eleanor Cordero looked at the letter. It was on plain white paper. It was addressed to Tom and told him he could either join in the frame against Sonny or else Parks, Smith and Cordero would force Zaher to testify in the Grand Jury against Matteo. Eleanor Cordero remembers Ann Zaher telling her she showed the letter to Tom Matteo in Forest Park in Queens and Matteo laughed at the import of the letter.

13) Eleanor Cordero provided your deponent with a copy of Grand Jury testimony given by her husband, John Cordero. This transcript was smuggled out of the prison or prosecutor's office and contained notations by John Cordero aimed at informing Mrs. Cordero of the facts to which John Cordero intended to testify. This was done to prepare Eleanor Cordero, should she be called to testify at the trial.

14) Your deponent met with Thomas Matteo at the Federal Detention Facility on St. Andrews Place in Manhattan, New York. This meeting occurred on Tuesday, September 9, 1975. Mr. Matteo was apprised that your deponent represented John Franzese and wished to speak to Mr. Matteo about his boyhood friend, Charles Zaher. Mr. Matteo remembered having received a letter from Charles Zaher, delivered by Mrs. Ann Zaher. This letter was shown to Mr. Matteo in Forest Park in Queens, New York and then was taken back by Mrs. Zaher. This incident took place

prior to Matteo's indictment in Queens, New York in September 1966. The letter informed Matteo that Zaher was being pressured to testify against Matteo by Richard Parks. Zaher warned Matteo that he had already framed Tony and was being forced to frame this guy Sonny and unless Matteo agreed to testify in conformity with the story Zaher and Parks were telling, Zaher would be forced to testify against Matteo also. Matteo refused to comply and was subsequently indicted by the Queens Grand Jury, stood trial and was acquitted.

15) On the ninth day of September 1966, a motion was filed on behalf of John Franzese for an order directing a deposition of Charles Zaher, Jr. be taken. In his affidavit, John Franzese states, "I further believe that the said Charles E. Zaher, Jr. has very pertinent information concerning my position as a defendant in this action, more particularly my innocence. . . . It is my firm belief that the said Charles E. Zaher, Jr. has important information which is necessary for my defense, without which I will be definitely prejudiced." The docket sheet in this case records that this motion was withdrawn.

WHEREFORE, your deponent respectfully submits that this Court grant an order pursuant to 28 U.S.C. 2255 setting aside the judgment of conviction rendered April 17, 1967 against John Franzese and dismissing indictment 66 Cr 161 or in the alternative granting the defendant a new trial, on the grounds that the testimony adduced by the Government at the trial was

false and perjurious and of such a material nature so as to deny the defendant his rights under the fifth amendment to the United States Constitution.

_____

Michael B. Pollack

Sworn to before me

this day of September 1975.

_____

NOTARY PUBLIC

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-v- : 66 Cr 161

JOHN FRANZESE, :

Defendant. :

----------x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

THOMAS MATTEO, being duly sworn, deposes and says:

1. I am presently in the custody of the United States Attorney General pursuant to a judgment of conviction entered in the Eastern District of New York.

2. I am a lifelong resident of New York and spent my adolescent and early adult years in close friendship with Charles E. Zaher, Jr.

3. When Charles E. Zaher, Jr. was arrested in October of 1965, I accompanied his wife to West Street and FBI headquarters to gather his personal possessions. I visited Charles Zaher on several occasions during his incarceration at West Street.

4. During the spring of 1966, Ann Zaher brought me a message from her husband. This message was written on a folded piece of paper which Ann Zaher showed me in Forest Park, Queens, New York. The import of the message was that Charles Zaher would

be forced to testify against me falsely unless I would agree to join with Zaher and his three co-defendants in manufacturing testimony against Sonny Franzese. I didn't think Charlie Zaher would ever sink to such a deplorable state as to frame a close friend for murder and told Ann Zaher I would not join in this diabolical plan. Within six months I was indicted, along with John Franzese, for the murder of Ernie Rupoli.

5. Shortly after seeing the above described message, I asked a mutual friend to inform Mr. Franzese of this message.

Thomas Matteo

Sworn to before me

this 22nd day of September 1975

NOTARY PUBLIC

NICHOLAS ANTONCIC
NOTARY PUBLIC, State of New York
No. 52-0081640, Suffolk County
Commission Expires March 30, 1977

PETITIONER'S MEMORANDUM OF LAW (Filed September 29, 1975)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:
	Criminal No. 66-161
- v -	:
	:
JOHN FRANZESE,	:
	:
Defendant	

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S FRANZESE'S MOTION PURSUANT TO 28 U.S.C. §2255

BY: MICHAEL B. POLLACK, ESQ.
1345 Avenue of the Americas
New York, New York 10019

BEST COPY AVAILABLE

STATEMENT OF FACTS

On September 27, 1965 an FBI agent swore out an affidavit stating probable cause for the arrest of James Smith a/k/a Jimmy Ryan, Eleanor Cordero and John Cordero, charging them with violations of 18 U.S.C. 2113 (c) (d), 371 and 2. On September 30, 1965, the aforementioned three parties and Richard Parks were arrested by agents of the FBI. The record does not indicate any affidavit being filed in support of the arrest of Richard Parks. On October 8, 1965, an indictment was returned charging Smith, John Cordero and Parks along with Anthony Polisi, Salvatore Polisi and Charles E. Zaher, Jr. for their part in the seven bank robberies committed between July 7, and September 15, 1965. This begins one of the most debated and controversial cases to be brought in the Eastern District of New York in a long time. On January 10, 1966 Smith, Cordero, Parks and Zaher withdrew their not guilty pleas and pled guilty to one count of the

indictment and the trial of Anthony and Salvatore Polisi commenced. Parks, Smith and Zaher testified against the father and son. John Cordero did not testify, Eleanor Cordero did not testify and in fact, was never indicted. Both Salvatore and Anthony Polisi were found guilty of the charges against them.

During their trial, Anthony Polisi was depicted by the witnesses as the mastermind of the bank robberies while Salvatore Polisi was depicted as a party involved in stealing cars, planning bank robberies and actually participating in the bank robberies. Subsequent to their trial, Zaher, Parks and Smith joined by John Cordero told agents of the FBI and later a federal grand jury that, in fact, Anthony Polisi played a minor role in the robbery of these banks and that the actual ringleader was John Franzese, and that the failure to name Franzese in their initial statements to law enforcement officials was caused by their fear of the said John Franzese. In January,

February and early March of 1967, John Franzese was tried along with several co-defendants for his part in a bank robbery ring which robbed banks in four states. These robberies occurred on July 30, 1965, August 13, 1965, both in New York, September 1, 1965 in Chicopee, Mass. and subsequent to September 1, a robbery which occurred in Denver, Colorado and in mid-September in Salt Lake City, Utah.

The four witnesses each testified at length during the trial of John Franzese, each justified his failure to initially name Franzese as the leader of the operation by his claimed "fear." Testimony brought before and without the presence of the jury indicated their fear was generally almost totally from heresay, street talk and general jailhouse gossip, and none of the witnesses had actually participated in or observed first-hand any act of violence committed by John Franzese. After a rather acrimonious trial, the jury deliberated for the

better part of three days at which time they found the defendant Franzese guilty of Counts 2, 4, 7 and 8 of the Indictment. The defendant Franzese was committed to the custody of the Attorney General of the United States under Title 18 U.S.C. 42082 for a period of 25 years on Count 2 and 25 years on Count 4 to run consecutively. Franzese was incarcerated in March of 1970. Subsequent to the trial in Albany, the same witnesses twice again testified against the defendant Franzese. He was acquitted in Queens County, New York on a charge of murder which was, like the federal charge, almost wholly based on the testimony of the four bank robbery witnesses. Franzese was also tried and acquitted in Nassau County on a charge of first degree robbery.

A key date to the Government and State case in both the bank robbery and murder trials was the alleged meeting at the Aqueduct Motel in Queens, New York which allegedly took place between July 19 and July 23, 1965.

All four witnesses testified to being at the meeting when both the murder of Ernie "The Hawk" Rupoli, and the conspiracy to rob banks was discussed. Now comes Charles E. Zaher, Jr. to state that this meeting was a fabrication proffered by the four witnesses in an effort to gain leniency for themselves. Zaher's recantation brings into issue the testimony of Parks, Smith and Cordero who also stated that Zaher was at the meeting. Taken in conjunction with the legal precedent set forth below and the previously submitted affidavit of Eleanor Cordero detailing her own involvement in these bank robberies mandates this Court to order a dismissal of the indictment herein as to the defendant John Franzese or, in the alternative, to grant John Franzese a new trial.

ARGUMENT

I. Scope of 28 U.S.C. 2255

Title 28 of the United States Code 2255 states in part:

> "Unless the motion and the files and the records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto."

In discussing the scope of 28 U.S.C. 2255 as compared to the constitutionally guaranteed writ of Habeas Corpus the Supreme Court stated in Kaufman v. United States, 394 U.S. 219, 222; 22 L. Ed. 2d 234 (1969):

> "The authority of the federal courts to issue the writ of habeas corpus was incorporated in the very first grant of federal court jurisdiction made by the Judiciary Act of 1789, c. 20, §14, 1 Stat 81, with the limiting provision that 'writs of habeas corpus shall in no case extend to prisoners in gaol, unless where they are in custody, under or by colour of the authority of the United States....' Commonlaw principles initially determined the scope of the writ. Ex parte Bollman, 4 Cranch 75, 93-94, 2 L Ed 554, 560, 561 (1807). In 1867, however, the writ was extended to

state prisoners, and its scope was expanded to authorize relief, both as to federal and state prisoners, in 'all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty of law of the United States....' Act of February 5, 1867, c. 28,§ 1, 14 Stat 385.

[3-7] Section 2255 revised the procedure by which federal prisoners are to seek such relief but did not in any respect cut back the scope of the writ. The section was included in the 1948 revision of the Judicial Code 'at the instance of the Judicial Conference [of the United States] to meet practical difficulties that had arisen in administering the habeas corpus jurisdiction of the federal courts. Nowhere in the history of Section 2255 do we find any purpose to impinge upon prisoners' rights of collateral attack upon their convictions. On the contrary, the sole purpose was to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum,' United States v. Hayman, 342 US 205, 219, 96 L Ed 232, 241, 72 S Ct 263 (1952) (italics supplied), 'the legislation was intended simply to provide in the sentencing court a remedy exactly commensurate with that which had previously been available by habeas corpus in the court of the district where the prisoner was confined.' Hill v. United States 368 US 424, 427, 7 L Ed 2d 417, 420, 82 S Ct 468 (1962). Thus, we may refer to our decisions respecting the availability of the federal habeas remedy in deciding the question presented in this case.

At the core of our system of justice is the theory that guilt is individual and only those who are guilty should have their freedom infringed upon by society. Dignity is an American concept which must be collectively exhibited by our government if our citizens are to respect and obey the laws of the land. This perjurious testimony offends our sense of justice and a conviction gained through the use of such testimony is tainted and must be reversed. This the Supreme Court stated in Mesarosh v United States, 35 2 U.S. 1, 9 (1956)

> "The dignity of the United States Government will not permit the conviction of any person on tainted testimony."

The task of habeas, in general, is to test by way of an original civil proceeding, independent of the normal channels of review of criminal judgments, the very gravest allegations. Where an applicant alleges facts, which, if proved, would entitle him to relief, the federal court to which he has applied has the power to receive the applicant's evidence and try the facts anew. Kaufman v. U.S., supra; Townsend v. Sain, 372 U.S. 293, 9 L.ed.2d 770,

83 S.Ct. 745 (1963). This, according to Kaufman, supra, is also the task of a 2255 proceeding. Thus, we now reiterate and conclude that a section 2255 proceeding performs for federal prisoners the same institutional function of supervising the trial level administration of federal rights that habeas corpus serves for state prisoners.

> "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." Harris v. Nelson 349 U.S. 286, 291; 22 L.Ed. 2d 281, 286 (1969).

The writ as intended and construed provides "the continuing availability of a mechanism for relief." Kaufman supra at 226.

Having established that habeas corpus standards applicable to state prisoners are also applicable to federally incarcerated prisoners, the Court in Townsend v. Sain, supra enunciated the controlling criteria for the guidance of federal habeas corpus courts. These standards

were applied to federal prisoners in Kaufman v. United States, supra. The circumstances anyone of which shall mandate review are:

> "(1) the merits of the factual dispute were not resolved in the state hearing;
>
> (2) the state factual determination is not fairly supported by the record as a whole;
>
> (3) the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing;
>
> (4) there is a substantial allegation of newly discovered evidence, (emphasis supplied);
>
> (5) the material facts were not adequately developed at the state court hearing; or
>
> (6) for any reason it appears that the state trier of fact did not afford the habeas applicant a full and fair fact hearing."

Note, that the district judge hearing the 2255 motion has no discretion in the first six circumstances, among which lies "newly discovered evidence." He must (emphasis supplied) grant an evidentiary hearing, if the applicant meets the Townsend and Kaufman standards for that circumstance.

There is no time limit for 2255 motions. 28 U.S.C. 2255 permits a motion to be "made at any time." Neither a statute of limitations nor the doctrine of laches is applicable to a motion under 2255. Heflin v. United States; 358 U.S. 415, 3 L.ed 2d 407 (1959); McKinney v. United States; 208 F. 2d 844 (D.D.C. 1953); To place a limitation on the period in which such a motion could be brought would undercut the purpose of the right.

> "The primary purpose of a habeas corpus proceeding is to make certain that a man is not unjustly imprisoned. And if for some justifiable reason he was previously unable to assert his rights or was unaware of the significance of relevant facts, it is neither necessary nor reasonable to deny him all opportunity of obtaining judicial relief." Townsend v. Sain, supra. at 317

II. STANDARDS APPLIED TO NEWLY DISCOVERED EVIDENCE

The standards applied to newly discovered evidence in Townsend, supra, apply today to applications

for habeas corpus, and, as we have seen earlier, apply to federal prisoners in a 2255 proceeding. Kaufman, supra. These standards say that,

> "where newly discovered evidence is alleged in a habeas application, evidence which could not reasonably have been presented to the state trier of facts, the federal court must grant an evidentiary hearing. Of course, such evidence must bear on the constitutionality of the applicant's detention; the existence merely of newly discovered evidence relevant to the guilt of a state prisoner is not a ground for relief on federal habeas corpus. Also, the district judge is under no obligation to grant a hearing upon a frivolous or incredible allegation of newly discovered evidence. The conventional notion of the kind of newly discovered evidence which will permit the reopening of a judgment is, however, in some respects too limited to provide complete guidance to the federal district judge on habeas. If, for any reason not attributable to the inexcusable neglect of petitioner, see Fay v. Noia, supra, evidence crucial to the adequate consideration of the constitutional claim was not developed at the state hearing, a federal hearing is compelled. The standard of inexcusable default set down in Fay v. Noia, supra, adequately protects the legitimate state interest in orderly criminal procedures, for it does not sanction needless piecemeal presentation of constitutional claims in the form of deliberate by-passing of state procedures."

In United States v. Polisi, 416 F. 2d 573, 574 (2d Cir. 1969) it was stated that,

> "where the conviction is shown to be based in part upon perjured testimony, however, a court will not stop to inquire as to the precise effect of the perjury, but will order a new trial if without the perjury the jury might not have convicted." Mesarosh v. United States, 352 U.S.1, 1 L. ed. 2d 1, 775, Ct. 1 (1956); Larrison v. United States, 24 F. 2d 82 (7th Cir. 1928).

CONCLUSION

Counsel is fully aware that motions for a new trial based on newly discovered evidence are looked upon with disfavor by the courts. This traditional approach is further aggravated in the case of John Franzese because of two things; firstly, the very nature of the testimony offered at his trial regarding his alleged role in organized crime and his penchant for violence, and secondly a statement in 1971 by Eleanor Cordero that she was offered $50,000 to get "Sonny on the stree."

Counsel is further aware that upon such motions courts question the diligence of the defendant in procuring the new evidence. However, for the following reasons it shall be clear that we have met this criteria and, therefore, could not have found until recently the evidence which now proves John Franzese's innocence. The element of fear was testified to, to such a great degree at the trial, that no defense counsel could possibly approach such hostile witnesses. Anna Zaher's own statement that she refused to give the letter to William Kleinman precluded

defendant from seeking same. The denial by Charles Zaher at the murder trial that he wrote letters to people other than relatives precluded us from seeking such new evidence as we today present.

It is counsels impression that the Court believes that any motion brought on behalf of John Franzese is the product of subornation of perjury brought about by a money payment or the promise of same contingent upon success. Nine months ago, as a prosecutor employed by the Department of Justice I would have shared this opinion. However, in the six months of my representation of John Franzese I have never been asked to do anything illegal or unethical by my client or anyone related to him. No one has ever suggested a money payment be made to any witness I have spoken with. On the contrary however, demands for payment in return for testimony and documents have been made of my client. None of these demands have been by Charles E. Zaher, Jr. but have been made by his wife Ann, unbeknownst to her husband, and Eleanor Cordero. This demand by Ann Zaher of $100,000 was made in exchange

The court must look at this case in an objective light. To do so one can only conclude Charles Zaher, and consequently James Smitn, Richard Parks and John Cordero, testified perjuriously against John Franzese for their personal betterment.

In 1965 Charles E. Zaher, Jr. was a heroin addict a and petty crook facing up to fifty years in jail for : s admitted role in two robberies of federally insured banks. He had every reason to testify in a manner he believed would insure himself lenient treatment. Today he is not an addict and has been gainfully employed for the past six years. He consequently stands to lose six years of employment because of his admission of giving perjurious testimony and also the fact his employer will find out about his undisclosed past. This fact, the admitted perjury, the note smuggled from the jail to Thomas Matteo, the conduct of Ann Zaher during the time this motion was being factually developed and legally researched, the fact that there was no corroboration for the four bankrobbers at the trial regarding their dealings with John Franzese all substantiate our claim that John Franzese is wrongfully imprisoned based on perjurious testimony which denied him

Due Process of Law. Justice demands he be given a new trial.

MINUTES OF SEPTEMBER 29, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

Plaintiff, :

-against- : 75-C-1613

JOHN FRANZESE, :

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

September 29, 1975
3:35 o'clock p.m.

B e f o r e :

HON. JACOB MISHLER,

CHIEF U.S.D.J.

GENE RUDOLPH
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER
United States Attorney
Eastern District of New York

By: THOMAS R. PATTISON
Assistant United States Attorney

MICHAEL B. POLLACK, ESQ.

1345 Avenue of the Americas
New York, N.Y.

JOSEPH F. VOTTO, ESQ.
Attorney for Charles Zaher

* * *

THE COURT: United States against Franzese.

Where is Mr. Pollack?

MR. PATTISON: He was here, your Honor.

THE MARSHAL: He's in the hallway, Judge. Let me see if I can find him.

THE COURT: Do you have a lawyer, Mrs. Zaher?

MRS. ZAHER: Pardon me?

THE COURT: Do you have a lawyer?

MRS. ZAHER: No.

THE COURT: It is very important that you get a lawyer.

MRS. ZAHER: Mr. Votto is outside.

Perhaps he can represent me, if I ask him.

THE COURT: Did you ask Mr. Votto to be here?

MRS. ZAHER: Yes, I had called Mr. Votto.

MR. POLLACK: He's outside, sir.

THE COURT: Ask Mr. Votto to come in and ask Mr. Zaher to come in, too.

Are you Mr. Votto?

MR. VOTTO: Yes, your Honor. Good afternoon. Joseph F. Votto, 87-10 Queens

Boulevard, Elmhurst, New York.

THE COURT: Do you represent Mr. Zaher?

MR. VOTTO: Yes, your Honor.

THE COURT: Mrs. Zaher said that she thought that she wanted you to represent her. Is there a conflict of interest?

MR. VOTTO: I think there is, your Honor.

THE COURT: Mr. Pollack advised the Court that Mr. Zaher was cooperating with Mr. Franzese in this application and the charge of Mr. Pollack is that you are withholding a letter.

MRS. ZAHER: I no longer have the letter in my possession, your Honor. Mr. Pollack does have a copy of the letter.

THE COURT: Where do you have the letter?

MRS. ZAHER: I burned the letter on Sunday after I had an argument with my husband.

THE COURT: Do you want to put her under oath?

MR. POLLACK: Your Honor, I'll put her under oath.

I'll also state that I was told there would be a story like this unless the payment

I set forth in my affidavit was forthcoming prior to the submission of the letter to me.

THE COURT: Well, the point is that - -

MRS. ZAHER: May I say something?

THE COURT: The answers to the question might very well incriminate Mrs. Zaher.

MR. POLLACK: I think that she should have an attorney.

THE COURT: I do not know whether she can be charged with some kind of a fraud, if indeed there was no letter.

MRS. ZAHER: Your Honor, may I say something?

THE COURT: Well, I do not know whether you should say anything.

MR. PATTISON: Your Honor, maybe if we could just possibly assign a lawyer, recess for fifteen minutes?

THE COURT: I do not have a lawyer available.

MR. PATTISON: I guess you don't have time.

THE COURT: As I recall, the Legal Aid Society represented a defendant in this action. I don't know who they represented.

MR. PATTISON: I don't.

MR. POLLACK: Cordero.

THE COURT: Cordero, so they certainly are not in a position to represent Mrs. Zaher.

Do you care to have Mr. Zaher testify on this at all?

MR. VOTTO: Pardon me, your Honor?

THE COURT: Do you care to have Mr. Zaher testify? He apparently should know something about this. He made an affidavit.

MR. VOTTO: Yes. He prepared the letter that's in question here, your Honor.

THE COURT: That is what he says.

MR. VOTTO: And he delivered it to his wife.

THE COURT: That is what he says.

MR. VOTTO: That's what he tells me, yes.

THECOURT: Suppose you swear Mr. Zaher in and if he makes any statements that you think might tend to incriminate him, then you assert the privilege. Will you?

MR. VOTTO: Yes, your Honor.

THE COURT: Swear Mr. Zaher in. I'll

try to get you somebody, Mrs. Zaher.

C H A R L E S Z A H E R , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT: Mr. Zaher, the court's interest is only in the letter.

May I have the papers, please?

MR. POLLACK: Your Honor, there is a copy in your chambers.

MR. PATTISON: I have a copy, your Honor.

THE COURT: Does this now have a civil number?

MR. POLLACK: Yes. The clerk assigned it the same number as the affidavit submitted last November by Mr. Lyons.

THE COURT: What number is that?

MR. POLLACK: I think it's 1555 but I'm not sure.

THE COURT: That is a very easy way of losing track of papers, I can assure you of that.

Why didn't he give you another number?

Did he run out of numbers?

MR. POLLACK: He said that that was their practice, sir. I did not know of any other, so I just - - Mr. Costello was the clerk.

THE COURT: You say that while you were confined to Danbury, you gave your wife a letter to deliver to Mr. Matteo? Is that right?

THE WITNESS: Yes, sir.

THE COURT: What was the date of that letter? When did you send it out of Danbury?

THE WITNESS: I - - I think it was around May.

THE COURT: May of what year?

THE WITNESS: May of '66. Somewhere around that time.

THE COURT: Are you sure it was May of '66?

THE WITNESS: I have - - I'm just - - I really don't recall.

THE COURT: Well, give me your closest estimate.

THE WITNESS: I can't think right now,

Judge Mishler. So much happened since.

THE COURT: What year was it?

THE WITNESS: '66.

THE COURT: No question about that?

THE WITNESS: No question about that.

THE COURT: Doubtful about the month?

THE WITNESS: Yes, I'm doubtful about the month.

THE COURT: What season was it?

THE WITNESS: It was spring, sort of. It could have been March, April, May; something like that.

THE COURT: When did you last see this letter?

THE WITNESS: I seen it about - - I didn't see it. My wife told me that she had it, you know, about two months ago.

THE COURT: You never saw it again after you mailed it?

THE WITNESS: Yes. She showed me some of it, I believe.

THE COURT: Some of it?

THE WITNESS: Yes. We had two letters, two letters I sent out to Mr. Matteo.

THE COURT: I am referring to the letter which in part said - - addressed to Thomas Matteo, "Tommy, they really have me squeezed in. I tried to bug out but I didn't make it. I don't mind testifying against guys I don't know but you are a different story."

THE WITNESS: That's one of the letters I wrote.

THE COURT: When did you see that last?

THE WITNESS: A couple of months ago.

THE COURT: You saw the actual letter? Not a copy now?

THE WITNESS: It could have been a copy. I don't know.

She just read it to me from upstairs. She wouldn't let me see it, you know. My wife wouldn't let me see it.

THE COURT: You said there were two letters?

THE WITNESS: Yes.

THE COURT: Did you send them both out at the same time or at different times?

THE WITNESS: Different times.

THE COURT: When did you send the other

letter out?

THE WITNESS: I might have sent it out when I was in State Court, when Detective Joe Price got Matteo's - - his sister had an unlisted telephone and he went through police channels and got the telephone number for me and I called up Tommy Matteo but I didn't reach him. I reached his brother-in-law and his sister and I talked to them for a while and I believe after that I sent the letter out, that I mailed the letter through passing it to my wife.

THE COURT: Did anyone ask you to come to court today?

THE WITNESS: No. My mother-in-law called me up at work and I jumped in a cab and I came down.

This has been a complete shock to me, when Mr. Pollack arrested my wife.

THE COURT: May I know when you retained Mr. Votto?

THE WITNESS: Excuse me?

THE COURT: When did you retain Mr. Votto?

THE WITNESS: About six, seven months ago.

THE COURT: Was it with reference to this matter?

THE WITNESS: Yes.

MR. VOTTO: Excuse me, your Honor. May I interject for a moment?

My understanding is that when he retained me, he had forgotten about this letter.

THE WITNESS: Yes. This letter was completely - -

MR. VOTTO: He had retained me, your Honor, because he wished to recant and this letter only came to my knowledge maybe two or three weeks ago. I don't think he had remembered up until that point.

THE WITNESS: I didn't. I completely - -

THE COURT: When you say you wished to recant, did anyone approach you and ask you to?

THE WITNESS: To recant?

THE COURT: To recant.

THE WITNESS: No. It was on my own.

THE COURT: You did that on your own completely?

THE WITNESS: Yes.

THE COURT: Do you remember - - can you fix the date that you decided to recant?

THE WITNESS: Well, I tried to recant in 1968 when I first came out of jail, but Maurice Edelbaum didn't want no part of me. He was scared of me.

And 1970 - - the latter - - in December of '74 I went to another law firm on Queens Boulevard and I tried to recant in this attorney's office but he wanted to charge me a ridiculous sum of money.

THE COURT: Didn't you ever go to Mrs. Franzese or - -

THE WITNESS: No.

THE COURT: Or one of the relatives to tell them you wanted to recant?

THE WITNESS: No, I didn't.

THE COURT: You did not do that?

THE WITNESS: No.

THE COURT: You mean, you just walked in on lawyers and told them you wanted to recant?

THE WITNESS: No. I was thinking about this for years. It's been on my mind.

THE COURT: Who recommended you to the lawyers?

THE WITNESS: Nobody.

THE COURT: You just walked in?

THE WITNESS: I went to Queens Boulev and - - and - - Legal Aid Society to get some information. One of the Legal Aid Societies recommended me to some attorneys across the street, and when I went there I talked to this one attorney, I forgot his name, and he asked me for $10,000. So I walked out of his office. I told them I'd return tomorrow and talk to him further, which I never returned, and this Franzese contacted me about a month later.

She says "I heard that you were in so-and-so's office and you tried to - - you told them that you lied about my husband," and I told her "Yes."

THE COURT: That was how long ago?

THE WITNESS: That was around six months ago, seven months ago, you know.

THE COURT: You do not remember the name of the lawyer?

THE WITNESS: No, I don't.

THE COURT: Was it Lyons & Earlbaum?

THE WITNESS: No.

THE COURT: No?

THE WITNESS: It was the firm Mr. Votto was associated with.

THE COURT: What is the name of that firm?

MR. VOTTO: Lobotkin & Rubinstein, your Honor. Lobotkin, Rubinstein & Votto. I was a partner at that time.

THE COURT: Did Lobotkin & Rubinstein represent Mr. Franzese in any of these proceedings?

MR. VOTTO: No, your Honor.

My understanding was that he came in to see me. I was not in the office and Mr. Lobotkin and Mr. Rubinstein - -

THE COURT: He came to see you?

MR. VOTTO: Yes.

THE COURT: How did you learn Mr. Votto's name?

THE WITNESS: From a Legal Aid. I was asking - - asked them certain questions and he says "You need a private attorney," and he recommended Mr. Votto.

THE COURT: Did you see your wife last Sunday?

THE WITNESS: Yes.

THE COURT: Did you have some argument?

THE WITNESS: Yes.

THE COURT: About what?

THE WITNESS: I went out Friday night and I didn't come home until late and I was in discotheques. She got mad.

THE COURT: Do you live with her?

THE WITNESS: No. We own a home which is a few blocks away from her mother-in-law's house.

THE COURT: She got angry because you stayed out late and you do not live with her? Is that what you are saying?

THE WITNESS: Yes.

I see her every night. It's an odd situation.

THE COURT: You recognize it as an odd situation?

THE WITNESS: Yes, I do.

I'm fixing up the house. The house is in repair.

THE COURT: Do you have any questions, Mr. Pattison?

MR. PATTISON: Just a few, your Honor.

Mr. Zaher, when is the last time you have seen this letter?

THE WITNESS: I never seen it, really. I mean, until I wrote it.

MR. PATTISON: So you haven't seen it since 1966?

THE WITNESS: Yes.

MR. PATTISON: You said, I believe, that you began to make efforts to recant testimony; is that right?

THE WITNESS: Yes.

MR. PATTISON: When did these efforts start approximately?

THE WITNESS: In '68.

MR. PATTISON: And you felt the same way since then, up until now?

THE WITNESS: Yes.

MR.PATTISON: Is that right?

THE WITNESS: Yes.

THE COURT: I want to focus on the existence or non-existence of the letter.

MR. PATTISON: Yes, I am.

THE COURT: Do you remember what you said in the letter?

THE WITNESS: No. At the time, no.

THE COURT: Now? Do you remember what you said?

THE WITNESS: Now, parts, not all. To be honest with you, because I completely forgot that I even wrote it, until I read the trial transcripts and I talked to my wife and I talked to Mr. Pollack, Mr. Votto on certain things.

THE COURT: When did she first disclose to you that she kept the letter?

THE WITNESS: Well, the Franzese family tried to - - contacted my wife, see. They always knew there was a letter because Matteo told his attorneys there was a letter and they always tried to get the letter from my wife, you know, and my wife told me that she, you know, destroyed it.

THE COURT: She told you she destroyed it back then?

THE WITNESS: No. She didn't tell me

actually she destroyed it. She lost it, you know.

THE COURT: When did she tell you that?

THE WITNESS: Oh, when the Franzese family contacted her. They wanted - - they offered her $10,000 for this letter, reputedly, this is what she told me. She had a meeting with Michael Franzese, with Miss Eleanor Cordero in a restaurant and he - -

THE COURT: Michael Franzese and Eleanor Cordero?

THE WITNESS: Yes.

THE COURT: Together?

THE WITNESS: Yes.

THE COURT: Which restaurant, do you know?

THE WITNESS: This was Jahn's Ice Cream. Not Jahn's. Long's Ice Cream Parlor. Is that correct?

MRS. ZAHER: Yes.

MR. VOTTO: Excuse me, your Honor. May I ask a question?

Would it be all right to ask the witness if he was present at this time?

THE WITNESS: No, I wasn't present. This is what my wife told me. This is what she told me, and she told me - - Michael Franzese, that she didn't have the letter.

THE COURT: What do you want me to do in light of the fact that the witness says she destroyed the letter?

MR. POLLACK: I'd like to have the witness as - - I would like to ascertain whether the witness will say there was a letter, whether she got it in 1966 and whether the affidavit I provided is an accurate reproduction of the contents of that letter that she says she destroyed yesterday.

THE COURT: Will you take that without her being sworn?

MR. POLLACK: I think to protect my client, your Honor, I have to have it sworn.

THE COURT: What is that?

MR. POLLACK: I think to protect my client, I must have it sworn.

THE COURT: Are you going into the attempts to extract money?

MR. POLLACK: Your Honor, all I want

at this time is the letter.

I would suspect that at the November 7th date the court will ascertain whether or not a new trial should be granted or whether or not a hearing is necessary to determine the credibility of the accusations brought forward.

At this time the only purpose of having Mrs. Zaher here today is to gain access to the letter so that it can be tested. The date and legitimacy of the letter can be ascertained by law enforcement authorities through the laboratories or else by the defendant with their own laboratory work-up so that we can know for a fact whether or not this letter, which I maintain I think I can prove was written between the time of the Franzese robbery indictment in March of '70 - - '66.

THE COURT: I do not want those speeches. That is for another time.

MR. POLLACK: Exactly, your Honor. But that is exactly - - that is what I am trying to pin down at this time and that is the purpose of seeking a letter.

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THE COURT: I do not know what - - I have another summation which I am going to take care of now and I do not know who I can appoint as an attorney.

MR. PATTISON: Your Honor, may I just ask one or two more items?

THE COURT: Go ahead.

MR. PATTISON: You said that you went to a law firm, Rubinstein, Votto & - -

THE WITNESS: Yes.

MR. PATTISON: Lobotkin, and they wanted to charge you $10,000?

THE WITNESS: Yes.

MR. PATTISON: For what service?

THE WITNESS: For protecting my rights in court on a recantation.

THE COURT: How much are you paying Mr. Votto for this service?

THE WITNESS:A thousand dollars.

THE COURT: The same lawyer, right?

THE WITNESS: Yes, but he don't belong to the firm no more.

MR. PATTISON: Okay.

THE COURT: With everything going up,

I congratulate you for coming down, Mr. Votto.

MR. VOTTO: Thank you, your Honor.

MR. POLLACK: Your Honor, I would say that - - to facilitate matters, I would take it unsworn at this time from Mrs. Zaher.

THE COURT: All right. The questions are what?

MR. POLLACK: Was a letter given to her by her husband that he smuggled out of Danbury Prison? Did she show me that letter in the beginning of September at a European American Bank on Pennsylvania and Jamaica Avenues in Brooklyn, New York; and does the affidavit that I submitted have an accurate representation of - - third, did she meet with me at Mr. Votto's office in early September to discuss the letter?

THE COURT: Suppose you step down, Mr. Zaher.

THE WITNESS: Yes.

THE COURT: All right. You can sit where you are, unsworn, but you are being - - it is being recorded. You understand that?

Go ahead.

MR. POLLACK: Mrs. Zaher, in 1966, did

you visit your husband at Danbury?

MRS. ZAHER: Yes, I did; on several occasions.

MR. POLLACK: And on two of those occasions did he give you a letter which you were to take out of the prison without the censorship requirements at a prison being met?

MRS. ZAHER: Yes, he did.

MR. POLLACK: And the second of those letters, did you discuss that with me in late August of 1975? Last month?

MRS. ZAHER: Yes, it was discussed last month.

MR. POLLACK: And subsequent to the initial discussion, did you meet with me in Mr. Votto's office in early September, this month, of 1975?

MRS. ZAHER: Yes, that's correct.

MR. POLLACK: And was the purpose of that meeting to present to me a handwritten copy, your handwritten copy of the note you said your husband had given you?

MRS. ZAHER: That's correct.

MR. POLLACK: Subsequent to showing

me that letter, did you arrange to meet me at a European American Bank at 9:30 on a Tuesday morning, I believe, at Jamaica and Pennsylvania Avenues in Brooklyn, to show me the letter?

MRS. ZAHER: Yes, I did.

MR. POLLACK: On that occasion did you enter a safety deposit vault at the bank?

MRS. ZAHER: Yes, I did.

MR. POLLACK: And did you exit the vault?

MRS. ZAHER: Yes.

MR. POLLACK: Were you carrying a ring case?

MRS. ZAHER: Yes, I did.

MR. POLLACK: Did you open that ring case up?

MRS. ZAHER: Yes, and I showed you the letter from the ring case.

May I say something about it?

MR. VOTTO: Wait.

THE COURT: All right. I just want to know anything that has to do with the letter. I am not quite sure you burned the letter.

MRS. ZAHER: I was just going to say, I have the key to the safety deposit box on me and I'll be glad to turn it over to the court, that they may open the box.

THE COURT: That is one step.

MRS. ZAHER: I'll do that now.

THE COURT: I was going to enjoin the bank from opening that box.

MRS. ZAHER: They took my keys downstairs, but with my keys is the box. I'll give you the box number and I'll sign the release for you to open that box because the letter is no longer there. I burned it.

THE MARSHAL: Excuse me, your Honor. I have the possessions.

THE COURT: You have the keys?

THE MARSHAL: I have the possessions that were taken from her. I have the possessions that were taken from her down at the pen.

MR. POLLACK: Do you have another safety deposit vault in the Richmond Hill Savings Bank?

MRS. ZAHER: No, I don't.

THE COURT: I certainly am not going

to the bank.

MR. POLLACK: Do you have any other safety deposit boxes?

MRS. ZAHER:No, I don't have any other safety deposit boxes at the present time, none.

MR. POLLACK: Mrs. Zaher, I would like to show you a - - I'd like to read you the following words.

MRS. ZAHER: May I say something? I have a mortgage with the Richmond Hill Savings Bank, not a safety deposit box.

MR. POLLACK: Mrs. Zaher, I'd like to read you the following words and ask you if they represent the content of the letter you showed me at the European American Bank.

"Hi Tom, I hope by now you got some sense and listened to Ann. Ritchie is going to testify against you and they want me too. You see how we framed this guy Tony and I have to go along with the guys to frame this guy Sonny, too, for these fucking bank robbers. I should have stayed robbing the cars with you. At least there was more money in it. How are

you doing? Ann told me she gave you my keys. Do you still have the garage? Tom, they really have me squeezed in. I tried to bug out but I didn't make it. I don't mind testifying against guys I don't know but you are a different story. If you go along with us, I will have no choice. Listen to Ann, she'll run down the story to you. I hope you do the right thing. Blackie."

MRS. ZAHER: That sounds like the letter but I don't have the letter memorized word for word.

MR. POLLACK: That letter, did you show it to Thomas Matteo?

MRS. ZAHER: Yes, I did.

MR. POLLACK: Did you show it to Thomas Matteo in Forest Park, by the carousel in Queens?

MRS. ZAHER: Yes, I did.

MR. POLLACK: Did you show it to Thomas Matteo who was in the company of one Tyler Sommers?

MRS. ZAHER: Yes, I did.

MR. POLLACK: What did Mr. Matteo say

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to you?

MRS. ZAHER: Nothing. He didn't believe it. He said Blackie would never testify against him.

MR. POLLACK: Didn't you tell me on the telephone that Mr. Matteo and your husband were the best of friends?

MRS. ZAHER: They were very good friends.

MR. POLLACK: And when was this letter given to you, Mrs. Zaher?

MRS. ZAHER: I would say, in the spring of '66.

MR. POLLACK: Prior to June 15?

MRS. ZAHER: I assume but I do not remember. I only know the weather was warm because the carousel was open but I don't remember the exact date. I couldn't say.

MR. POLLACK: Your Honor, may I just show the witness something to refresh her recollection?

THE COURT: You know, I have a summation in this trial still going.

MR. POLLACK: Two seconds.

Is that dated June 15?

MRS. ZAHER: Yes, it is.

MR. POLLACK: And is that letter from your husband?

MRS. ZAHER: Yes, it is.

MR. POLLACK: And is that letter subsequent or after the time of the first letter?

MRS. ZAHER: Yes, it is.

That letter is also my property. May I have it back?

THE COURT: Do you have any objection to turning the original of that so the government can test it?

MR. POLLACK: None at all, your Honor.

THE COURT: Do you want to take it for testing, Mr. Pattison?

MR. PATTISON: Yes, I would, your Honor.

THE COURT: Mark it for identification.

MR. POLLACK: Your Honor, I'd ask for permission to make a copy, if I may.

THE COURT: Surely. You can do it right now.

MR. PATTISON: Does Mr. Pollack have any further questions?

THE COURT: I am not going to permit any by the government.

MR. PATTISON: Your Honor, I would just like to say for the record that I do not waive cross-examination but I would wish to cross-examine at some later point.

THE COURT: This is not a formal proceeding.

MR. PATTISON: When the witness is under oath.

THE COURT: I used this procedure to attempt to get a letter.

MR. PATTISON: I just merely - -

THE COURT: That Mrs. Zaher said she destroyed Sunday.

MR. PATTISON: I just merely wish that the record show that I do not waive any or agree with anything that has been said.

THE COURT: The envelope, too?

MR. POLLACK: I only have an envelope.

THE COURT: What envelope did you have?

MR. POLLACK: My envelope, sir. It was not an envelope from the prison.

THE CLERK: So - -

THE COURT: As soon as you are free, Xerox a copy and give a copy to Mr. Pollack and the original to Mr. Pattison.

As soon as you have had it tested, you will turn it back to Mr. Pollack. Have it tested as soon as possible.

MR. PATTISON: Yes, I shall, your Honor.

THE COURT: Mrs. Zaher made an offer of turning over her vault keys.

MR. PATTISON: I have this key. The marshal handed it to me.

THE COURT: Give it back. I do not want the government to have it. It is Mr. Pollack that wants it.

What do you want to do with the vault key?

MR. POLLACK: Your Honor, I do not believe the letter is in the vault. I have not believed it for about two weeks.

Mrs. Zaher has indicated to me telephonically that the letter had been removed, so I - -

THE COURT: That is up to you. I do not want to miss an opportunity and have any - -

have the defendant charge me with not taking every precaution. 103a

MR. POLLACK: Your Honor, if Mrs. Zaher will go to the bank with me, I would very much like to see the contents of the vault.

THE COURT: Why don't you take the vault key and meet her at the bank tomorrow?

MR. POLLACK: Very fine.

THE COURT: All right. You turn it over to Mr. Pollack, Mrs. Zaher.

What time tomorrow, Mr. Pollack?

MR. POLLACK: I can be there at 9:00 a.m., your Honor. If the bank opens earlier, I'll be there earlier. I do not know the hours.

MRS. ZAHER: The bank opens at 9:00 a.m.

THE COURT: All right. Will you be there at 9:00 a.m.?

MRS. ZAHER: Yes, your Honor. If you want it, I'll be there.

THE COURT: No, not I. I am not making any direction. You understand that.

MR. POLLACK: I will be there at 9:00 a.m.

THE COURT: I am making no direction

that she be there and I am not - -

MR. POLLACK:No. She has offered to be there. I am taking her up on her offer.

MRS. ZAHER: Your Honor, I have offered to be there for you and for the court, not for Mr. Pollack. I will go there with someone from the court.

THE COURT: I happen to have other things to do.

MRS. ZAHER: I understand that.

MR. PATTISON: Might a marshal go, your Honor? Is that possible?

THE COURT: It is not their job, either. I do not like to involve officers, they should not be involved.

MR. POLLACK: Would Mrs. Zaher accept Mr. Votto?

THE COURT: I do not know.

MR. PATTISON: There is a conflict of interest which has been alleged as of now earlier.

THE COURT: I see Mr. Votto giving some advice.

MR. PATTISON: That's what I wish to

point out and let the record indicate.

THE COURT: Suppose Mr. Votto and Mr. Pollack are there. Will you be there?

MRS. ZAHER: Mr. Votto doesn't represent me. He represents my husband.

THE COURT: I know. No one here represents you. Get your own lawyer. Bring your own lawyer down there.

MRS. ZAHER: I will be there, your Honor.

THE COURT: What?

MRS. ZAHER: I will be there. I have nothing to hide. I'll be there. I'll be glad to open the box.

THE COURT: You have the key, Mr. Pollack. Mrs. Zaher said she will be there.

The only purpose is to see whether there is any letter that you can use. All right?

MRS. ZAHER: That's fine.

THE COURT: With that understanding, the warrant is vacated.

MR. POLLACK: Thank you, Judge.

THE COURT: You are free to go, Mrs.

Zaher.

MRS. ZAHER: Thank you very much, your Honor.

THE CLERK: Letter that was marked Defendant's Exhibit A for identification.

(So marked.)

* * *

EXHIBIT

DEFENDANT'S		For Iden.
A	Letter	35-A

* * *

LETTER OF OCTOBER 1, 1975 FROM MICHAEL POLLACK TO CHIEF JUDGE MISHLER

MICHAEL B. POLLACK
Attorney at Law
1345 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019
TELEPHONE (212) 247-3720

1 October 1975

Chief Judge Jacob Mishler
225 Cadman Plaza East
Brooklyn, New York, 11201

Dear Judge Mishler:

On September 30, 1975 at 9:05 A.M., I met Mrs. Ann Zaher at the European-American Bank on Jamaica and Pennsylvania Avenues, Brooklyn, New York. At that time, Mrs. Zaher entered the safe deposit vault, and exhibited to me a box she kept in that vault. This box contained a savings bank book and three letters from her husband while he was in jail. I asked that these letters not be destroyed in that they could be useful for comparison with the letter I submitted to the government on September 29, 1975. Since the letter previously seen in that bank was not in the vault, I returned the key to Mrs. Zaher and exited the bank. Ann Zaher and I departed each other's company at approximately 10:30 A.M.

When I docketed the motion in the case at bar, I was informed by the Clerk of the Court that the Court has scheduled oral argument for November 7, 1975 at 2:00 P.M. Due to the nature of the facts contained in the motion filed on behalf of Mr. Franzese, I deem it essential that I be prepared to answer each and every question the Court or government might have concerning our motion. To do this it is imperative that I be able to discuss this case frequently and at length with my client for at least one week prior to oral argument. This need can be highlighted by directing the court to the Notice of Motion filed on Mr. Franzese's behalf dated September 9, 1966. In his supporting affidavit, my client said, "I further believe that the said Charles E. Zaher, Jr. has very pertinent information concerning my

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position as a defendant in this action, more particularly my innocence." Mr. Matteo stated in his affidavit that he informed Mr. Franzese that he had received a letter indicating Mr. Franzese was being framed. The motion was subsequently withdrawn. Lester Landy, Esq., the attorney for John Franzese in September 1966, has since passed away and only Mr. Franzese can supply counsel with the answers to the obvious questions this motion raises. This is but one of the reasons, although the outstanding one, that counsel deems it imperative to have access to his client on a regular basis for extended periods of time, at least one week prior to date of oral argument. I respectfully request the court to sign an order transferring Mr. Franzese to the Federal Detention Center in Manhattan from Leavenworth, Kansas on or about October 31, 1975.

Yours, etc.

MICHAEL B. POLLACK
Attorney for Defendant
John Franzese
1345 Avenue of the Americas
New York, New York 10019

MBP:el

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK 11201

CHAMBERS OF
JACOB MISHLER
CHIEF JUDGE

October 8, 1975

Michael B. Pollack, Esq.
1345 Avenue of the Americas
New York, New York 10019

Re: U.S.A. v. Franzese
Docket No. 75-C-1613

Dear Mr. Pollack:

I do not intend to hold an evidentiary hearing on November 7, 1975. I decline to order Mr. Franzese to New York for your convenience until I determine that a hearing on the issues is necessary.

Very truly yours,

Jacob Mishler
U. S. D. J.

cc: AUSA Tom Pattison

TRANSCRIPT OF NOVEMBER 5, 1975 IN CAMERA CONFERENCE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

against :

JOHN FRANZESE, : 75 CR 1547
75 CR 1613

Defendant :

----------x

United States Courthouse
Brooklyn, New York

November 5, 1975
5:00 p.m.

B e f o r e:

HONORABLE JACOB MISHLER,

Ch. U.S.D.J.

SHELDON SILVERMAN
Acting Official Court Reporter

Appearances:

DAVID G. TRAGER, Esq.
United States Attorney for the
Eastern District of New York

By: THOMAS PATTISON, Esq.
Assistant U.S. Attorney

MICHAEL POLLACK, Esq.
Attorney for Defendant

Also Present:

JOSEPH VOTTO, Esq.

(The following occurred in chambers.)

THE COURT: Mr. Pollack called and asked for this.

MR. POLLACK: About a week ago, Mr. Votto called me and informed me that the letter Mrs. Saher had burned had in fact been turned over to Mr. Votto approximately ten days ago.

THE COURT: When did we have that hearing?

MR. POLLACK: The 29th of September, I believe, your Honor.

THE COURT: Did you already have it in your possession when she testified?

Would you turn it over to the Government for analysis.

MR. POLLACK: Mr. Votto informs me that he has had an independent analysis done which accounts for the delay between the time he got the letter and his apprising me of its existence, and because of concern for propriety we immediately called the Court to make the Court aware of its existence.

As I'm aware, the result of the testing today at ten after one, Mr. Votto can fill you in on the rest.

MR. VOTTO: Upon receipt of the letter, I wanted to make sure it was authentic. I took it

to Mrs. Hannah Sulner. She's an undisputed document and handwriting expert. I left it with her last week.

She called me this morning at about eleven, made arrangements to meet me at one.

At 1:10 I met her. She returned it to me and she gave me an oral report of what her examination disclosed. I might add, your Honor, both Mrs. Sulner and my client, Mrs. Saher, agreed to have me present it to the Court, but they suggested that I don't turn it over to anyone but the Court.

THE COURT: What did the report say?

MR. VOTTO: Indicates the letter is over five years old. She says she cannot pinpoint as to the exact date, and I didn't tell her anything about the date, but she can definitely state in excess of five years old.

THE COURT: What's the date of the letter?

MR. VOTTO: No date on the letter, your Honor, it's a handwritten letter.

THE COURT: When did she say all this happened or when did you say it happened?

MR. POLLACK: Mrs. Saher testified -- I said it happened in the affidavit prior to June 15, 1966, which is in relation to the letter

I turned over to the Government bearing the date of September 29th, which Mrs. Saher said the reference was made to the letter.

Mr. Saher, when he testified, originally said May of 1966, but when the Court asked him for a specific he said he could not be specific, he said March, April or May, the spring of 1966. That was on the 29th, the time of the hearing.

THE COURT: How can you make your test, Mr. Pattison?

MR. PATTISON: We have had one test done of the one letter which I have. The laboratory report is summarized and briefly, it says very little, your Honor, that there is nothing that can be gleaned from the water marks or from the ink.

It's very common paper and that there was nothing to test it with. There was no known sample. It just is an unknown paper of common origin, nothing about the paper or of the ink used.

THE COURT: Who is supposed to have sent this letter?

MR. POLLACK: Charles Saher gave it to his wife, handed, in prison -- which letter that they have, or we have.

THE COURT: The letter--

MR. POLLACK: The letter, Mr. Votto, was not sent, it was given to Mrs. Saher at the Danbury institution.

THE COURT: Who?

MR. POLLACK: By her husband, Charles Saher.

THE COURT: Saying the paper is more than five years old doesn't help too much. This case is ten years old. He was in jail ten years ago.

MR. POLLACK: Nine years ago, your Honor.

THE COURT: Can you check that out, maybe fix--

MR. PATTISON: Your Honor, might I say this: Based on a phone call I had last week from Mr. Pollack toward the end of the week, in which he asked me if I would attempt to ascertain what type of paper was used at the prison where Mr. Saher was lodged at or about this time, I called up the agents and they have interviewed certain prison officials. There is a 302 report of that interview coming to me. I do not have that as yet. This was just done as of the end of last week.

THE COURT: I think at the very least we should take that letter and Xerox it and turn it over to the Government and then in the meantime you

keep it in your custody and let the Government decide what tests they can make. It's possible to make tests while it's in your custody, Mr. Votto.

MR. PATTISON: I have one item here, the letter that was turned over to us during the prior court proceeding as Defendant's Exhibit A, the letter which Mrs. Saher did have at that time, which we have tested and which we had nothing to compare it to. There's nothing, as I say, about the paper or the ink--

THE COURT: We'll turn it back, take a Xerox copy. Suppose you give me both letters to Xerox it.

MR. PATTISON: I have Xeroxed that letter.

MR. POLLACK: That's the letter I saw.

THE COURT: This is supposed to be given to Tom Matteo.

MR. POLLACK: Sent to Tom Matteo. Mrs. Saher told me and Matteo confirmed she was shown it by the carousel, in Forest Park, in Queens, New York, and that Mrs. Saher took it back.

THE COURT: When did Saher say he gave this to his wife?

MR. POLLACK: In the spring of 1966.

THE COURT: The trial was completed in April.

MR. POLLACK No.

MR. PATTISON: 1967, your Honor.

MR. POLLACK: The indictment was March of '66, the indictment in the new trial in Queens County was in September of '66. This was between the two. It was sent to Matteo. It was taken to Matteo. The information we're going to allege at the hearing, your Honor, was sent back to my client and based upon the information he received, a motion for a deposition of Charles Saher pursuant to 17C was filed by Lester Landy, his attorney, which was then supported by an affidavit of my client in which he said Charles Saher had information which could prove his innocence.

THE COURT: When was that?

MR. POLLACK: September 9, 1966.

THE COURT: So they knew about this September 9, 1966?

MR. PATTISON: Prior to the trial.

THE COURT: Prior to the trial, is that what you're saying?

MR. POLLACK: I'm saying, your Honor, they heard there was a letter, yes. They never had it confirmed to them.

MR. PATTISON: My examination of the cross-

examination of Mr. Saher at the trial indicates there wasn't any reference made--

MR. POLLACK: There is at the murder trial, in which Mr. Kleinman who represented Mr. Matteo, who was not indicated in the robbery indictment, makes extensive cross-examination.

THE COURT: Did Saher testify at the murder trial?

MR. POLLACK: Yes, they asked him about correspondence he sent out of prison. He said he only wrote to family. Mrs. Saher told me she received a call from a man identified himself as Kleiman.

THE COURT: Matteo was one of the co-defendants in the murder trial.

MR. POLLACK: Yes.

THE COURT: You say he saw this letter.

MR. POLLACK: Matteo was not indicted when he saw the letter. The murder indictment was not down yet, no indictment.

MR. PATTISON: I believe the critical issue is, and I'll point it out, according to the motion papers filed, Mr. Matteo communicated facts as to the existence, alleged existence, of this letter prior to the Franzese bank robbery which is the

subject of the case.

THE COURT: Have you interviewed Matteo?

MR. POLLACK: An affidavit from Matteo, your Honor, Matteo remembered sending words to Franzese, not personally. He's not sure who it was. He has a recollection of one person. Franzese has a recollection of another person telling him that a letter existed . There was no way to get it. Saher had it. There was no way to approach her.

The allegations of threats, intimidation and fear was so heavy at the time they were not going to make any approach of Mrs. Saher.

During the murder trial he said she received a call from Mr. William Kleinman, who represented Matteo and asked for this letter. Mrs. Saher told Kleinman, and this is all her representation to me, if Matteo is convicted she'll come forward.

MR. POLLACK: I have asked both of them to go through their files. Neither has come back to give me an answer.

The crucial issue, there is no way to get to these people, could not make an approach. If John Franzese had tried to reach her, made an approach and anybody connected in this case in the climate of 1966, there would have been allegations

of intimidation, threat, only intensified the problems which were already apparent to the defense counsel.

Mr. Landy did try to reach Charles Saher. He tried to reach him on September 9, 1966.

MR. PATTISON: Subpoena duces tecum could have been issued during that trial, and there were no allegations that this was going to be done by way of fear. It would have been done by a marshal and the Court would have signed one.

MR. VOTTO: In line with that, that was done by you last month. It didn't produce the letter. This woman would not release the letter.

MR. POLLACK: I'll state to your Honor additionally if one does not have subpoenas as a prosecutor--

THE COURT: It was produced now, wasn't it? How do you know what this woman is going to do? She struck me as being totally unstable, day-to-day thing with her.

MR. VOTTO: I can't quarrel with that, your Honor.

THE COURT: First she wants $100,000 for the letter. Now Saher was in such fear of his life that he says he left, left town and she's demanding

$100,000 of Franzese?

MR. VOTTO: Mr. Saher has lived at the same address he left prison, his name is in the phone book with his address. This fear, I don't believe it really exists. Anyone that wanted to reach him could. To this day he's still in the phone book. He's lived at that address since he comes out of prison.

THE COURT: There was testimony he left town for a while and couldn't be found. I recall that very clearly.

MR. PATTISON: Went to Lexington, Kentucky.

MR. POLLACK: Not at this trial. At the murder trial there was testimony, when he broke out of the civil jail. At the federal court was the testimony of Cordero to slash his wrists.

THE COURT: I remember some testimony on Saher.

MR. PATTISON: Testimony that he turned himself into the Lexington, Kentucky, drug rehabilitation center.

MR. POLLACK: After the alleged meeting on the 20th, he took a trip upstate with his family, from July 29th to August 8th.

THE COURT: I thought the testimony was he

was in fear of his life, from Franzese.

MR. POLLACK: Afraid of Polisi. Polisi sent the contract out on him.

THE COURT: I don't know whether Polisi was identified.

MR. POLLACK: In that trial I would state unequivocally it's not Polisi and if the Court wishes I'll cite it to the page in which this comes out.

THE COURT: You said it was.

MR. POLLACK: It was Polisi. The only threat allegedly from Franzese which Saher talks about at this trial is the guard, Guccia, when Saher is in prison. It comes out after he's incarcerated, October, 1966.

The reason he left because of Polisi, he got word from his boyhood friend Richard Parks he had told a friend of his, Benjie Shameli, of his part of the bank robbery; Parks told him this got back and they ordered him killed for the security of the operation.

There's no mention at all of leaving because of Franzese. I think it's important that this be clarified. The only threat allegedly in Saher's testimony about Franzese is a statement he says

was made by a guard by the name of Guccia in West Street, who came in, made the statement, "Sonnie knows you're going against Polisi. If you go any further, you're dead."

That's page 1753 of the transcript.

THE COURT: What do you want with reference to this letter? Do you think an expert can look at it?

MR. PATTISON: I think possibly with the two letters, I think the test might be done concerning whether they were written by the same hand, first of all, and relative to each other, some time tests.

THE COURT: Let's look at the letter. That's pretty easy to tell.

MR. POLLACK: There's ample testimony Saher wrote out and signed 302s for this period. There are exemplars regarding that.

MR. PATTISON: There has to be a questioned document.

THE COURT: Sometimes it's clear enough to a layman.

MR. PATTISON: Might I say I think the letters-- I'll wait until you read the letter.

THE COURT: Go ahead.

MR. PATTISON: I was going to say, your Honor,

I think the letters may be viewed in many different lights, in many different points of view, depending upon what he was trying to say at that time, that the letters themselves are not the critical issue here. It is Saher's letter.

THE COURT: I don't want to argue the merits at this point.

MR. PATTISON: I don't either, your Honor. To say the authorship and dates of these letters are somewhat relevant.

MR. POLLACK: Crucial, your Honor. If the Government wishes to take the position that Saher has fabricated.

THE COURT: I'm not going into the merits.

MR. POLLACK: I'm sorry. I just want to make sure these letters are genuine, written at the time they said they were written.

MR. POLLACK: That is why Mr. Votto--

THE COURT: Then I'll read them.

We have two stories, to begin with, Mrs. Saher that she tore the letter up and now the letter is produced.

MR. POLLACK: Absolutely, your Honor.

THE COURT: Mind you, the letter was sent to Matteo, he reads the letter and gives it back

to her.

MR. VOTTO: That was her instructions from Mr. Saher, to show him the letter, get it back, because it had been taken out of the prison without the knowledge of the authorities. He didn't want it out. This is what he told me.

THE COURT: Wouldn't the letter then be to destroy it as soon as he read it or that Matteo destroy it?

MR. VOTTO: I can show you things from Mrs. Saher that are fifteen years old. She's a saver. She has the postcards, the brochures, the map of Storyland, North Pole, where she took the children nine, ten years ago.

THE COURT: Does she have more letters from Mr. Saher from prison?

MR. POLLACK: Yes, three more letters I saw.

THE COURT: I'd like to see them all. Bring them all in. They may be revealing, too.

MR. POLLACK: The three I read are not revealing on this issue, but certainly revealing as to the paper content, everything else, certainly from that point of view. When I went to the vault the day after the court, we had Mrs. Saher in the court, three letters in that vault on that date,

the same place that I might say this is the ring case I was shown the letter in, I remember it with the insignia.

MR. PATTISON: I have not, of course, seen it. That I have seen, that letter I have seen. The other one I assume a copy will be rendered. Might I say this: that I have prepared at this time a memo of law which I will hand to Mr. Pollack and to the Court, although I would like leave--

THE COURT: I thought I was going to hear argument this Friday.

MR. PATTISON: You are, but I thought the Court would like the memorandum of law prior to the oral argument, but I would like at this point leave to amend the memo of law in light of what has just occurred.

MR. POLLACK: No objection.

THE COURT: If the law is correct, it's always the same. All you're doing is adding a point to it, you mean.

MR. PATTISON: I will be very frank: I would like to add an entire section, brand new section about newly found evidence, when it is in fact newly found.

THE COURT: Of course, I have written on that

on any number of occasions.

MR. PATTISON: I have come across it, but I didn't think it was particularly relevant to the motion as it was filed. Now I think in light of the allegations concerning this letter and in light of Mr. Matteo's knowledge communicated to Mr. Franzese, apparently prior to the trial, I think the characterization and Mr. Pollack's memo of law dealing with newly found evidence should be answered with much more depth than I have here.

THE COURT: Good.

MR. PATTISON: I would like to characterize this current memo of law as a preliminary memo of law if I might.

MR. POLLACK: We'll also do that.

THE COURT: Every memo of law is preliminary. It's only final after the opinion is filed. Then we get into law on motions to reargue.

MR. POLLACK: I would amend mine also. I think the Taylor case is very strong, should be taken--

THE COURT: What?

MR. POLLACK: Taylor case.

THE COURT: I don't know. I suspect U.S.v. Franzese can be cited any number of times.

MR. POLLACK: It can.

MR. PATTISON: Persico.

MR. POLLACK: Very easily distinguishable.

THE COURT: I'm not going to hear it now. If you argue it now, don't come in Friday.

There's going to be a new rule in this court very soon. Every paper is going to go down to the Clerk first.

MR. PATTISON: I would have filed it Friday.

Might I suggest that the Friday afternoon oral argument at this time, I think would serve little purpose. I would like a little more time.

THE COURT: You can also file additional papers after the argument.

MR. PATTISON: Very well.

THE COURT: Get the motion submitted and let me first determine whether a hearing is required.

MR. PATTISON: Might I thank everyone here who was made aware of my trip that I will not be in town.

THE COURT: Just give me time to finish what I'm doing here. I have been on another case a couple of days. We're in about ten lines. It's a motion on a letter found in someone's file. Suppose we read it.

MR. POLLACK: It's in the motion. Mrs. Saher turned over to me her handwritten copy what this letter was. Then when she showed me the letter I compared it, put the content of the letter in the motion papers.

In dealing with the Court, your Honor, on the 29th I sensed a great deal of animosity regarding the Franzese people, and the case.

I just want the Court to be aware of the fact that whatever my client, his wife, or anybody on his behalf has done, in this particular motion I am not aware of any improprieties having been committed.

I have sat on my client's wife very strictly in this proceeding. I set down very stringent guidelines under which I would accept the retainer from her to represent her husband in this motion. From that point of view,your Honor, all I can say is that I know I have discussed it often with Mr. Votto, who has not had the exposure to you that I have had. I know Mr. Votto felt a sense of distrust on the 29th when we were here, especially in terms of the Court's comment about his fee, fee arrangement with Charles Saher.

There have been no improprieties that we're

aware of.

THE COURT: I'm not going to discuss that, that fee arrangement he talked about it.

MR. POLLACK: That's right.

THE COURT: It's incredible to me.

On the one hand his wife is asking for $100,000 for the letter. On the other hand, he goes to a lawyer, and did he say the lawyer wanted $10,000?

MR. VOTTO: Correct.

THE COURT: For him to confess that he committed perjury.

MR. VOTTO: That's not accurate. He went to the attorney to ask to be represented, didn't know if he'd be subjected to perjury charges. He spoke to the attorneys, two of them. They had been my partners at the time. I was not in the office.

Mr. LeBetkin, at 125-10 Queens Boulevard. As I said I was not in the office at that time; I got this information from them when I got back.

They were of the opinion that this would be a very protracted proceeding and he may have been indicted for perjury. The fee they set, the $10,000 fee they set was for the proceeding plus a possible perjury trial.

When he came to me a few months later, after I left the partnership, he explained that he had gone there.

I told him I had known about it. I had no way of reaching him. He found me, came to me, said he did not return to them because he couldn't afford that kind of fee.

He had since checked with people. He felt that it shouldn't be that kind of fee.

At this time I would like to state he came to me, told me he perjured himself and put someone in the case.

As an attorney I would take the case for nothing.

THE COURT: You can understand that anyone who comes forward at this late date and says that he lied to the extent he did, if he lied, and is now telling the truth, earns the suspicion of this Court. More than that, as you know from the record, this is not the first attempt to set aside this sentence. Each time another lawyer came into the case. I think you're the fourth or fifth set of lawyers. I'm talking about you, Mr. Pollack, with Franzese.

More than that, I have received letters from Mrs. Franzese and/or her niece, who is going to law school, who has made the kind of threats

I almost expect from people who don't understand.

In one, as I recall it--and I have a whole file on Franzese--this girl was going to law school and as soon as she got out, she was going to see I was impeached. This is ridiculous.

Each time Franzese's motion has been on before me, Mrs. Franzese has been in the courtroom, caused a disturbance, made vague general threats, and I just wanted her to know that this is on the merits. No amount of threats is going to make a difference to me, and as you may know by now, a threat was made. I never told the person involved. The person was related to me, and I won't put it on the record, but I didn't discount it but I was ready to face it.

That kind of business may have some effect in some circles. It doesn't here. If we weren't ready to face that, we don't belong here.

MR. POLLACK: If you're referring to the threat of a couple of weeks ago--

THE COURT: The kidnapping threat.

MR. POLLACK: I do discount it. I tell you why. There is no one who could bring it about. You're dealing now with a man who has been in jail for six years. When the FBI went to interview Michael Franzese, they said something to him which

I think is fairly accurate in intelligence circles, most of the people who are the friends of his father really don't want his father out of jail. The people, the only person who has kept this thing alive the only person who is actively attempting to get him out--

THE COURT: Listen, I don't say they have the capability of carrying it out. I said I do not discount it. To me it's always possible.

MR. POLLACK: They're emotional people.

THE COURT: The point is that we're dealing with people who are angry, they're almost in a fury. They've gone to great lengths, both along the lawful route and, as indicated in the opinion of the latest opinion with Cordero, the unlawful route.

MR. POLLACK: That is Cordero's accusation.

THE COURT: Not accusation, there are FBI agents surveilling.

MR. POLLACK: Nobody overheard the offer.

THE COURT: I know, it wasn't pure coincidence that these people were in the bar where they said she would be.

MR. POLLACK: I have no doubt the meeting took place. It's impossible to make an offer to her

before she makes a demand of you.

THE COURT: I have some idea of these people, too; I've been with this case for some years. Who knows whether Mrs. Saher isn't of the same stripe.

MR. VOTTO: The important thing at this point the Court realizes that the attorneys in this case, I, for one, were thrown into it, Mr. Pollack had been retained, but we're being as honest and forthright with the Court as we know how to be.

THE COURT: You've made that impression. You needn't argue that any further.

I'm telling you at this point I know more about the case than either of you, know more about the personalities.

MR. POLLACK: Personality, absolutely. I met my client twice.

THE COURT: When you say there are certain distrusts, it's not of the lawyers, but there was distrust of Mr. Saher.

MR. POLLACK: That I believe, your Honor, is the crucial issue.

MR. PATTISON: Might I just say--

THE COURT: Suspicion is more than justified by the exhibit of that letter.

MR. POLLACK: The entire negotiations,

I had to go through with these people, my papers were specifically written so this Court will understand that I, who knows nothing about the case when I'm approached, dealt with these people.

THE COURT: I can tell you I'm sorry I didn't put Mrs. Saher under oath. I'd send this right to the grand jury.

MR. VOTTO: I understand that.

THE COURT: It may very well be a misstatement under 1001.

MR. VOTTO: My problem was she was very angry with Mr. Pollack for coming in before you and having her taken in. She called me at my office to represent her. I spoke to her at the adjoining courtroom with her husband. She was making all kind of threats to destroy Mr. Pollack's case. She would tell any kind of lie to destroy his case. She was not going to be treated that way.

At that point I told her I couldn't represent her because I was representing her husband.

The following evening she called me at my office and told me she appreciated very much the fact I came down when she called. She would like to come to see me. She came in.

I spoke to her. She asked me then to

represent her again.

I told her I couldn't because of the conflict with her husband.

She said there is no conflict. "My husband is telling the truth. I will corroborate what he says. I do have the letter."

At that point I agreed to represent her. That way, Judge, I felt as though I'm put in the middle.

MR. PATTISON: Might I just say that a motion of this type must be viewed under the Second Circuit law with distrust, not of the lawyers, but of the motion itself.

THE COURT: This has nothing to do with the lawyers. You're doing your job.

MR. PATTISON: These motions are generally suspect.

THE COURT: More than that. You'll find many cases that say after so many years judgments of conviction are not lightly set aside. Talk about after so many years.

MR. POLLACK: It's an extraordinary case.

THE COURT: I have so many extraordinary cases you wouldn't believe it. There's hardly a case in this court that's just an ordinary routine case.

MR. POLLACK: I have never seen a case in which witnesses get on the stand and admit prior perjury, inconsistent statement.

THE COURT: Really? Talk to Judge Bartels. He's a master, recantations of recantations of recantations.

The bank robbery case of that young man.

MR. PATTISON: Collins, Fisher.

THE COURT: You'll find this is not such an unusual case. What's unusual about this is the letter that seems to support his version that he was asked to lie.

Of course, it will take a long time if we have a hearing to get it all out of him. Ultimately, if I have a hearing this will happen.

MR. POLLACK: I would suggest to the Court maybe the extraordinary method of events, through a lie detector test or another test might be considered. It's a possibility, because--

THE COURT: The District of Columbia Circuit said lie detector tests aren't admissible even if the trial court thinks it's reached that state of the art where it's reliable. I don't know what our circuit will follow.

MR. PATTISON: My experience with talking

with men that do it, use it, is that it's simply not. It's good for leads, that's all.

MR. POLLACK: I'm not proposing it. I'm saying to the Court if the question becomes muddled and if there's direction or help needed, it's a possibility, but the duress indicator test is available.

THE COURT: Would Mr. Franzese be willing to take a lie detector test?

MR. POLLACK: Yes.

THE COURT: On the activity?

MR. POLLACK: Yes, Mr. Franzese wrote this Court a letter, which I have a copy, begging for a lie detector test, take sodium pentothal. I have spoken to Mr. Zimmerman, a test giver in Boston, Massachusetts, used by Mr. Bailey.

He has told me that he could give Mr. Franzese a test on this. Mr. Franzese has asked me on two occasions.

THE COURT: That's for the Government to consider.

MR. POLLACK: I'm stating for the Court.

THE COURT: Not for me.

MR. POLLACK: What I'm stating is simply this: the only thing I brought it up for, the first

conversation I ever had with this Court--

THE COURT: I'm not going to continue this much longer.

MR. POLLACK: I'm only involved in this case as a lawyer. If there's anything unlawful, I just hope that the Court will understand that, (1) the Court will notice the publicity has been generated in prior motions was never seen in this case. I'm doing my best--

THE COURT: That's another thing Mrs. Franzese tried to do, plant stories in the column in Newsday.

MR. POLLACK: Thank you.

THE COURT: I have the columns. Mrs. Franzese said.

MR. POLLACK: I have tried to make sure, heard all about the Court, my dear friend Mr. Dillon, a friend although not about Michael Dillon. I have been forced to live with this case. I view it as a civil liberties issue.

If a man is in jail, no matter what his name he does not belong there. I'm not involved. Never met any of his friends other than his own family. That is the only thing I'm involved in the case with.

My feelings have always been on that level. He represents Mr. Saher. We have wrestled with this

case since April of this year.

THE COURT: I'll hear the argument on Friday. The first question is whether I should hold a hearing.

MR. POLLACK: The first question, should we have a trial?

THE COURT: You don't think I'm granting a trial on motion papers when Mr. Saher says that he lied, do you?

MR. POLLACK: I can hope.

THE COURT: I took an oath of office to uphold the law.

MR. VOTTO: If the Government feels there's some test, my only obligation, I think I should be present.

THE COURT: That's all right. Maybe they'll decline it. Maybe they'll find they can't tell the age of paper, or that this paper came from the jail. This is a different paper than the other.

Thank you, gentlemen.

TRANSCRIPT OF HEARING DATED DECEMBER 12, 1975

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-C-1613

JOHN FRANZESE, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

December 12, 1975
10:00 o'clock A.M.

B e f o r e :

HONORABLE JACOB MISHLER, Chief U.S.D.J.

BURTON SULZER
OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: THOMAS PATTISON, ESQ.
Assistant U.S. Attorney

MICHAEL POLLACK, ESQ.
Attorney for Defendant

THE CLERK: Civil hearing, United States of America against John Franzese.

MR. POLLACK: For the petitioner, your Honor.

THE COURT: Both sides ready?

MR. PATTISON: Yes.

THE COURT: Call your first witness, Mr. Pollack.

MR. POLLACK: Thomas Mattio.

THE COURT: MR. PATTISON, Mr. Pollack, are any of the 50 or 60 people that walked in this room going to be witnesses in this case?

MR. POLLACK: Yes.

THE COURT: They are?

MR. PATTISON: My agent might be, your Honor. I will ask that he be allowed to sit here to assist me with the evidence.

THE COURT: Can you identify those that are going to be witnesses?

MR. POLLACK: Mr. Zaher is in the courtroom. Mr. Potere Batere may take the stand, your Honor. Of course, my client. At this point, your Honor, that's all that I see.

THE COURT: The rest are just visitors?

MR. POLLACK: I'm sorry, the expert witness that we intend to use is in the courtroom also.

THE COURT: All right.

MR. POLLACK: Your Honor, may I have something marked for identification?

THE CLERK: Three page document marked Petitioner's Exhibit 1 for identification.

(So marked)

MR. POLLACK: Your Honor, I have prepared a chronology of events by date which I would like to offer to the Government and the Court as a possible aid in following the chronology of the sequence of events ten years ago, if it is all right with the Court.

THE COURT: All right.

T H O M A S M A T T I O , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

THE COURT: Will I be given a copy of the transcript of this proceeding? Did you order the transcript?

MR. PATTISON: We shall, your Honor.

THE COURT: All right.

All right, Mr. Pollack.

MR. POLLACK: I didn't hear Mr. Pattison's answer to the Court's question. Is there a transcript

being ordered?

MR. PATTISON: We shall order it.

MR. POLLACK: The petitioner would like a copy, also, your Honor.

DIRECT EXAMINATION

BY MR. POLLACK:

Q What is your full name?

A Thomas Mattio.

Q I ask you to please keep your voice up so that we in the courtroom can hear your answers.

How old are you, sir?

A Thirty three.

Q Where do you presently reside?

A Federal House of Detention in Manhattan.

Q How long have you been there?

A Since Wednesday.

Q And how long have you been a federal prisoner, sir?

A About six months.

Q Now, sir, were you sentenced by a federal court?

A Yes, sir.

Q Was it this court?

A Yes, sir.

Q And when were you sentenced?

A June 6th of this year.

Q Now, Mr. Mattio, in 1965 how old were you, sir?

A Twenty three.

Q Do you know -- did you know in 1965 one, Charles Zaher?

A Yes, sir.

Q Did you know his wife, Ann Zaher?

A Yes, sir.

Q Did you know Richard Parks?

A Yes, sir.

A How well did you know these people?

A Very well.

Q What does very well mean, sir, will you explain?

A Well, I knew Blackie about close to ten years at the time. And I knew Richie about five years.

A When is the last time you saw -- is Blackie Charles Zaher?

A Yes.

Q When is the last time you saw Blackie?

A December 1967.

Q Do you see him today?

A Yes, sir.

Q Will you point him out, please?

A The fellow with the brown suit.

Q On what occasion did you happen to see him in 1967?

A He was testifying against me in a murder trial.

Q Now, sir, directing your attention to 1964. Were you arrested and indicted for a hijacking case?

A Yes, sir.

Q Who were your co-defendants?

A Richard Parks, William Weissbach, Arthur Gonsalves and another fellow, I forget his name.

Q Charles Neuner?

A Yes.

Q Did anybody else participate in that hijacking who was not indicted?

A Yes, sir.

Q Who was that?

A Charlie Zaher.

Q Did Charles Zaher testify at the trial against you?

A Yes, sir.

Q Did he admit his participation in the hijacking?

A Yes, sir.

Q Was he ever indicted for that hijacking, to your knowledge?

A Not that Iknow of.

Q When did you stand trial for that hijacking?

A June, 1966.

MR. POLLACK: May I have this marked for identification, please.

THE CLERK: Six page copy of document sheet, 64-CR-460 marked Petitioner's Exhibit 2 for identification.

(So marked)

MR. POLLACK: Your Honor, I would like to move that this be admitted into evidence. It is a document sheet of the 64-CR-460, the case Mr. Mattio just testified about, which I represent to the Court will become revelent as to dates as the testimony in this hearing proceeds.

THE COURT: Show it to Mr. Pattison.

(Pause)

MR. PATTISON: Your Honor, even though there appears to be numerous pencil marks and pen marks on this, we will --

THE COURT: I will disregard them.

MR. PATTISON: -- we will not object, assuming relevancy is shown.

THE COURT: Subject to connection, yes.

THE CLERK: Petitioner's Exhibit 2 previously marked for identification now marked in evidence.

(So marked)

BY MR. POLLACK:

Q Now, Mr. Mattio, in the spring of 1965, were you still friendly with Mr. Parks and/or Mr. Zaher?

A Yes, sir.

Q With which one, sir?

A Both of them.

Q During that time did you happen to have a conversation with either of those gentlemen regarding bank robberies?

A Yes, sir.

Q With which gentleman?

A Richard Parks.

Q Do you remember approximately when that conversation took place?

A In the spring of 1965.

A Do you know where it took place?

A I believe it was on Liberty Avenue.

Q What did Mr. Parks say to you, Mr. Mattio?

MR. PATTISON: I object, your Honor.

THE COURT: Overruled. I will take it.

A He said that -- he was talking to John Cordero about robbing some banks and he wanted to know if I wanted to participate in it.

Q Did you answer Mr. Parks?

A Yes.

Q What did you say to him?

A I said I didn't want anything to do with anything that John Cordero was involved with.

Q Now, did you ever have conversations regarding these bank robberies with Charles Zaher?

A Yes.

Q When?

A Not too long after that conversation with Richard Parks.

Q What was your conversation with Mr. Zaher about?

A He said that he was approached by them and asked to drive a car on the bank robbery.

Q When you say "them", who are you speaking about?

A Richard Parks and John Cordero.

Q And did Mr. Zaher say what his answer was?

A He was reluctant at first to participate, but he did.

Q Did there come a time when Mr. Zaher, to your knowledge, stopped participating in these bank robberies?

A Yes.

Q When was that?

A I think it was after the second bank robbery that he participated in.

Q Did you have a conversation with him about why he withdrew?

A Yes.

Q Will you tell us what Mr. Zaher said to you?

MR. PATTISON: Your Honor, I object again, especially since Mr. Zaher is here.

THE COURT: Overruled. I will allow it.

MR. PATTISON: And is going to be a witness.

THE COURT: I am going to allow any conversations that any witness had with Parks, Zaher, Smith or Cordero.

MR. POLLACK: Thank you, your Honor.

A I don't think he was getting along too well with John Cordaro, and he said he didn't want to participate in any more robberies with him. I think he was afraid of John Cordero.

Q Did you ever have a conversation with either Parks or Cordero regarding Zaher's ceasing to rob banks?

A Yes.

Q With who?

A Parks.

Q When was this?

A It was in the summer of '65.

Q And where did it take place, if you remember?

A I met him in a place called the Club Luhua on Liberty Avenue.

Q What did Parks say to you?

A Well, he came with a new car, a new Cadillac and he asked me to take a ride with him.

Q What color was the Cadillac?

A Red.

Q Did he say how he had bought it?

A He said he bought it with the money that he got from robbing banks.

Q What did Mr. Parks say to you?

A We took a ride and he said that they were looking for somebody to drive a car again because Blackie had stopped, he had disappeared, he dropped out of sight and he asked me again if I wanted tp participate and I told him my answer was still the same, that I didn't want

to. And he said that John Cordero was thinking about having his wife Elinor become the driver, and Richie wasn't too crazy about that idea, that he'd rather have me. I told him I still didn't want to participate. So I said, Why don't you go and ask Blackie again", he said, "Well, we can't locate him", and he says, "From what we understand, he's using drugs pretty heavy again and John Cordero was a little nervous about it, he's afraid if he getspicked up on a junk charge he might shoot off his mouth about the bank robberies, and me and John had been thinking aboutgetting rid of him."

Q I didn't hear the last part of that.

A "Me and John had been thinking about getting rid of him."

Q What did he mean by that?

A Killing him.

Q Why didn't you want to participate?

A I knew several people that did time with John Cordero and they said he couldn't be trusted and he was a psychopath.

Q During your conversations with Mr. Parks, or Mr. Cordero or Mr. Zaher, did any of them make any mention about somebody guiding them and giving them orders as to what banks to rob and how to rob them?

A No.

Q Did Parks or Cordero or Zaher ever tell you how they picked their banks?

A Richie told me he cased the banks himself, he picked the banks out.

Q When did he tell you this?

A During several conversations that I had with him.

Q How often would you see Parks or Zaher during this time period?

A Once a month, twice a month.

Q How about Zaher?

A Before he started robbing the banks I seen him quite frequently, but after he got involved with them I didn't see him too often.

Q Did you ever visit Mr. Zaher in West Street House of Detention?

A Yes, sir.

Q On what occasion, sir?

A I went there after he was arrested on the bank charge, I think about two weeks after, and I spoke to him about what was going on. I went there mainly just to see how he was.

Q Did you go with anybody?

Q I believe the first time I went alone.

A What was your conversation with Mr. Zaher, if you remember?

A I believe the first time I spoke to him, not too much was said. But the second time when I went back, I went with his wife and that's when he told me about him, Richie and Cordero cooking up a story about Polisi.

Q Is that Mr. Anthony Polise?

A That's right.

Q Did you know Mr. Anthony Polisi?

A I had met him on one occasion.

Q In the summer of 1965, did you know my client, Mr. John Pranzese?

A No.

Q Had you met him any time in the year 1965?

A No.

Q Now, sir, did there ever come a time when you had a discussion with Mrs. Ann Zaher regarding her husband's incarceration?

A One time in particular I remember.

Q Well, did there ever come a time when a letter or a document, a piece of paper was shown to you by Mrs. Zaher, which was -- which she told you came from her husband?

A Yes.

Q When was this?

A May of '66.

Q How can you pinpoint the date, sir?

A It was the month before my hijacking trial.

Q And where did this conversation take place?

A By the carousel in Forest Park.

Q And who were you with?

A I was with a fellow named Tyler Somers.

Q Who was Mrs. Zaher with?

A Her children.

Q Did you have a conversation with Mrs. Zaher at that time?

A Yes.

Q Was anything shown to you?

A She showed me a letter that was smuggled out of Danbury.

Q Did she tell you it was smuggled out of Danbury?

A Yes.

Q Did she tell you who gave it to her?

A She said her husband gave it to her.

A Did you read the letter?

A Yes.

Q Did you h ave any conversation with Ann Zaher about what the letter meant?

A Yes. She told me that --

MR. PATTISON: Your Honor, I object to this again. Hearsay.

THE COURT: I am going to take it even though it is hearsay.

Q What did Mrs. Zaher say to you?

A She told me that some men from the Queens District Attorneys' Office had been up to Danbury to talk to her husband and Cordaro and Parks and they were talking about a homicide case and they said they were going to put Sonny's name into it and a few other people, and she wanted me to partake in the frameup -- he wanted me to partake in the frameup, and that if I didn't partake in it that he was going to testify against me in my hijacking trial.

Q When you say "Sonny", you mean my client John Franzese?

A Yes.

Q In May of '66 had you yet met John Franzese?

A No.

Q When did you first meet John Franzese?

A I met him about three days after I was arrested on the homicide charge in the church of the

Queens County Jail.

Q Was that in late September or early October, 1966?

A Early October.

MR. POLLACK: May I have this marked on the back for identification.

THE CLERK: Document marked Petitioner's Exhibit 3 for identification.

(So marked)

Q I show you what has been marked as Petitioner's Exhibit 3 for identification and ask you if you have seen this document on a prior occasion?

A Yes, I have seen it before.

Q Where did you see it, Mr. Mattio?

A The first time I saw it was in Forest Park.

Q Who showed it to you?

A Mrs. Zaher.

Q Who was Blackie?

A Charles Zaher.

Q Did you know that?

A Yes.

Q Was that a commonly used name for Mr. Zaher?

A Yes.

Q Now, Mr. Mattio, when Mr. Zaher writes, "I

hope you got some sense and listen to Ann," did you know what that meant?

A Yes.

Q What did it refer to, sir?

MR. PATTISON: I object. The letter isn't in evidence.

THE COURT: Sustained.

Q Did you know who Tony was in the letter when you received it?

A Yes.

Q Who was Tony?

A Tony Polisi.

Q Did you know who Sonny was when you received the letter?

A Yes.

Q Who was that?

A John Franzese.

Q When Mr. Zaher mentioned his keys in the letter, can you tell us what that refers to?

MR. PATTISON: I object to that, your Honor.

THE COURT: Objection sustained.

MR. POLLACK: I submit it is totally relevant as to the motive --

THE COURT: It is not. What the speaker --

what the writer means it to be is one thing. What he understands the writer to mean or the speaker to mean is quite something different.

MR. POLLACK: He's supposed to have the keys is what the letter says, "Do you still have my keys?"

THE COURT: Objection sustained.

BY MR. POLLACK:

Q Mr. Mattio, did you answer Mrs. Zaher's request when she gave you that letter as to what you were going to do?

A Yes.

Q What did you tell her?

A I told her to "go back and tell your husband he's crazy, that I don't want no part of it."

THE COURT: When you say the carousel in Forest Park or was that the name of a bar?

A It was a carousel.

Q You mean a merry-go-round?

A Yes.

Q A children's amusement ride?

A Yes.

Q Mrs. Zaher had her children with her at the time?

A That's right.

Q After Mr. Zaher -- excuse me. After Mrs. Zaher showed you the letter, what happened to it?

A I gave it back to her.

Q And when is the next time you saw that letter after that date?

A About three months ago, I believe.

Q Who showed it to you?

A You did.

Q Where?

A In the Federal House of Detention.

Q Did I show you that letter or a copy of it?

A A copy.

Q When is the last time you saw that piece of paper with that writing on it?

A Other than today?

Q Yes.

A June -- May of '66.

Q What happened to the letter after it was given to you?

A I gave it back to Ann Zaher.

Q Did she say what she was going to do with it?

A I told her to just hold on to it, that I might need it.

Q Were you on good terms with Ann Zaher at this

time?

A Yes, very good terms.

Q Did you have any concern that if you requested the letter, she would not turn it back to you?

A Not at that time.

Q Did you ever request that letter of Mrs. Zaher at a later date?

A Yes.

Q When?

A When I was on trial in Queens.

Q Did you personally request it or was it requested on your behalf?

MR. PATTISON: May we have a date and time for that, your Honor?

THE COURT: I will allow Mr. Pollack to continue his examination. You can examine on cross-examination, Mr. Pattison.

Q Did you personally request that letter or was it requested on your behalf?

A It was requested on my behalf by my attorney, William Kleinman.

Q He told you this?

A Yes.

Q What did Mr. Kleinman tell you he had done

in efforts to obtain the letter?

A He said that he had called Ann Zaher and asked her if she would be willing to turn the letter over to him so he could use it as evidence, and she had said that she had burnt the letter.

Q Did you ever, prior to going on trial for murder, -- withdrawn. Prior to -- when you received the letter, did you send word or tell someone to get word to Mr. Franzese that there was information on Charles Zaher that --

A Yes.

Q Who did you tell?

A A fellow named Benji.

Q Benji?

A Yes.

Q What did you tell him?

A I told him that there was another case being talked about and I thought that Sonny should know about it, that they were getting ready to frame him on another case, a state case.

Q Now, at the time you saw the letter, had Mr. Franzese been indicted for the bank robbery charges in the federal court?

A Yes, sir.

Q Had he been yet indicted for the murder charge in Queens County?

A No, sir.

Q Was that the charge that you were referring to when you sent the message?

A Yes, sir.

THE COURT: You say you told Benji?

THE WITNESS: Yes.

THE COURT: Who is Benji?

THE WITNESS: He was an acquaintance of Mr. Franzese's.

THE COURT: Do you know his full name?

THE WITNESS: I believe his last name is Castalazo.

BY MR. POLLACK:

Q Did you ever discuss the letter with Mr. Edelbaum?

A Yes, sir.

Q When was this?

A I think it was before the murder trial.

Q Had the robbery trial been completed when you discussed it with Mr. Edelbaum?

A Yes, sir, I believe so, I'm not sure. I can't remember.

Q Did you ever discuss this letter with a Lester Landy?

A No.

THE COURT: When you say you discussed it with Mr. Edelbaum, what did you say to him?

THE WITNESS: I told him I had received a letter from Charles Zaher and in the letter it was pertaining to the murder case, and it might be useful in our defense. So he told me, "Well, tell your lawyer about it," he says, "You can use it for your defense." So I did.

THE COURT: Did you tell him what the contents of the letter was?

THE WITNESS: Yes, sir.

THE COURT: What did you say in effect?

THE WITNESS: I told him I received a letter from Charles Zaher stating more or less that if I didn't help him frame Mr. Franzese that I would be thrown into a case with him.

THE COURT: Mr. Edelbaum took no statement from you?

THE WITNESS: No, sir.

THE COURT: Where was this, at his office or elsewhere?

THE WITNESS: No, I believe it was when they were making a court appearance.

BY MR. POLLACK:

Q Were you ever able to get the letter?

A No, sir.

Q Were any questions asked at the trial, do you remember, regarding Mr. Zaher's writing of letters?

MR. PATTISON: Which trial, your Honor?

Q The murder trial, the trial you were a defendant in?

A I really don't remember.

Q What?

A I really don't remember.

MR. POLLACK: May I have a moment, your Honor.

(Pause)

MR. POLLACK: May I have Pages 239 and 240 marked for identification, please. This is a transcript from the indictment No. 1708-66 in Queens County, the trial before Honorable Albert H. Bosh, involved People of the State of New York versus Joseph Florio, William "Red" Crabbe, Thomas Mattio and John Franzese.

THE CLERK: Two pages marked Petitioner's Exhibit 4 for identification.

(So marked)

MR. PATTISON: May we have the date, your Honor?

MR. POLLACK: November 30, 1967

BY MR. POLLACK:

Q Mr. Mattio, directing your attention to the bottom half of Page 239 and the top half of Page 240. Will you read that and tell me if that refreshes your recollection regarding mention of letters?

(Pause)

Q Have you read that one page, Mr. Mattio?

A Yes, sir.

Q Does that refresh your recollection --

A Vaguely.

Q Can you now state whether there was any testimony regarding letters written by Mr. Zaher at the trial?

A Yes, there was testimony.

Q What did Mr. Zaher say?

A As far as any letters written to me, there is nothing in there. Just that he was supposed to have written letters to Mr. Gillen and to his relatives.

MR. POLLACK: I'd like to ask that 239 and 240 be marked into evidence.

THE COURT: May I see it. What is the purpose of it, that he said he wrote letters to relatives?

MR. POLLACK: Denying the existence of a letter to a friend.

THE COURT: What is the purpose of it, to prove that Mr. Zaher is unreliable?

MR. POLLACK: To show that efforts to ferret out a letter at that time had been unsuccessful.

THE COURT: I will allow it for that limited purpose.

THE CLERK: Exhibit 4 previously marked for identification is now marked in evidence.

(So marked)

MR. POLLACK: I have no further questions of the witness, your Honor.

THE COURT: Mr. Pattison.

MR. PATTISON: Yes, your Honor, I have a few.

CROSS-EXAMINATION

BY MR. PATTISON:

Q Mr. Mattio, you said that when Ann Zaher showed you this letter she also talked with you, is that right?

A That's correct.

Q And after having talked with her, and after

having read this letter, you told Mr. Edelbaum that Charles Zaher was going to frame Sonny Franzese, is that right?

A Yes, after I was arrested on the murder case.

Q And you told him that they were going to frame him on the bank robbery charge, is that right?

A No, I never mentioned that to him.

Q You said that they were going to frame him on the murder charge?

A I never spoke to Mr. Edelbaum until after I was arrested.

Q But when there came a time that you did?

A Well, I was in the Queens House of Detention.

Q Yes. And what did you tell him?

A I told him that I knew from the very beginning that there was a frameup, and that this case that we were all arrested on, the homicide case, I knew that that was going to be a frameup, too, I knew months ahead of time, only I wasn't positive that I was going to be thrown into it.

THE COURT: When you say you knew, did you have any other indications from anybody else that it was going to be a frameup?

THE WITNESS: His wife told me exactly what was going on, that --

THE COURT: Tell us exactly what his wife said was going on.

THE WITNESS: His wife says that the men from the Queens District Attorneys' Office were going up there and speaking to him and Parks about a murder case, and that they wanted me to participate in the frameup, that I was supposed to be given instructions through his wife the next time she went up there to see him as to what I was supposed to say against Mr. Franzese.

THE COURT: You say that the detectives who came to see Zaher, wanted to frame the case?

THE WITNESS: No, they made up the story, not the police.

THE COURT: Who?

THE WITNESS: Zaher, Parks and Cordero.

THE COURT: You said you knew even before this letter there was going to be a frame?

THE WITNESS: I knew a frameup was going to be put together concerning the bank robberies --

THE COURT: How did you know that?

THE WITNESS: I spoke to Charlie Zaher in West Street about it.

THE COURT: And that was a long time before

he sent the letter, right?

THE WITNESS: Yes, about eight or nine months before.

THE COURT: He told you they were starting to frameit at that time?

THE WITNESS: That's right.

THE COURT: And he identified those that were starting to frame it as Parks and Cordero and Smith?

THE WITNESS: That's right.

THE COURT: Those three?

THE WITNESS: Yes, sir.

THE COURT: No one else?

THE WITNESS: Well, he was involved in it, too.

THE COURT: And Zaher?

THE WITNESS: Yes.

BY MR. PATTISON:

Q So then when you saw this letter, and when you met Ann Zaher, as a result of the oral substance of what she told you, and the letter, you assumed, or you inferred that this letter referred to the murder trial, is that right?

A That's right.

Q Not to the bank robbery trial?

A Right.

Q And Mrs. Zaher didn't say anything to you which would counteract that assumption when she saw you with that letter, is that right?

THE COURT: Do you understand the question?

THE WITNESS: Well, I think he's trying to get the point across --

THE COURT: If you don't understand the question, don't worry about what he's trying to do. I want to know whether you understand the question. If you don't, say you don't understand it.

THE WITNESS: I don't understand it.

THE COURT: Reframe it, please.

BY MR. PATTISON:

Q As a result of having talked with Mrs. Zaher, coupled with reading the letter, you were of the assumption, or you thought after that, that the letter and Mrs. Zaher's meeting with you referred to the murder trial, is that right?

A I believe that it referred to everything in general concerning Mr. Franzese.

Q The bank robbery trial, too?

A Right.

Q And as soon as you heard this, you sent a message?

A Right.

Q Through a friend, is that right?

A That's correct.

Q To John Franzese?

A Right.

Q Which contained the substance of what this meeting was about, right?

A Right.

THE COURT: Is Benji going to be a witness at this hearing?

MR. POLLACK: No, your Honor, I don't know Benji.

Q What did you tell him, Benji?

A I told Benji that he better tell Sonny that he's going to be thrown into another case, that they are starting to frame up another case against him. It's going to be a state case and from what I understand it's supposed to be a homicide case.

Q Did you tell him how you knew this?

A I don't remember.

Q Did he ask you?

A I don't remember that either.

Q Did you tell him about your meeting with Ann, with Ann Zaher?

A I believe so.

Q Did you tell him what had occurred at that time?

A I believe I just told him I met with his wife and explained to him what was said to me.

Q Did you tell him about the letter?

A I don't remember.

Q You might have?

A Imight have.

Q Did you tell anyone else about this letter?

A Not that I can remember.

Q You didn't tell anybody else?

A I'm not sure.

Q Did you tell your own lawyer about this letter?

A Yes.

Q Who else did you tell about the letter?

A No one that I can remember. Except maybe someone in my family, something like that.

THE COURT: Did you meet Mrs. Zaher at the carousel by chance or was that meeting prearranged?

THE WITNESS: That was prearranged.

THE COURT: Where did you live at the time?

THE WITNESS: With my family in Richmond Hill.

BY MR. PATTISON:

Q This is the letter that you said that you

read, right?

A Yes.

Q And you have no real doubt as to what the import of it was, is that right?

A That's right.

MR. PATTISON: Your Honor, may I read one of the lines in the letter?

THE COURT: Yes.

BY MR. PATTISON:

Q Your impression was that they wanted you to join with Zaher in this frameup, is that right?

A That's right.

Q And if you didn't go along with them they would frame you, is that right?

A Right.

Q Did you read that sentence, "If you go along with us I will have no choice"? You read that sentence, sir?

A Yes, sir.

Q Does it say, "If you don't go along with us I will have no choice"?

A No, it don't say that.

Q What is that?

A No.

Q No, it does not say it?

A Right.

Q Yet you understood what was meant there, right?

A Yes.

Q There wasn't any doubt in your mind?

A No.

Q Mr. Mattio, I believe you said that you were sentenced in June of this year?

A That's correct.

Q To what, sir?

A Eight years to run concurrently with a ten year sentence that I already had.

Q What was the eight year sentence for?

A Narcotics.

Q Narcotics. Possession of narcotics?

A Conspiracy to sell narcotics.

Q Conspiracy to sell. What was the ten year sentence for?

A Conspiracy to sell narcotics.

Q The same crime?

A Yes.

Q Separate offense, though, right?

A Right.

Q You also have one other felony conviction, don't you, sir?

A That's the interstate theft, I believe.

Q And you were sentenced on that, right?

A Yes, sir.

Q Mr. Zaher was a witness against you in that trial, wasn't he?

A Yes.

Q Did you possess goods stolen from an interstate shipment, sir?

A Yes, sir.

A Mr. Zaher said that you did, too, right?

A I don't remember what Mr. Zaher said at my trial.

MR. PATTISON: I don't have any other questions.

THE COURT: Any redirect?

MR. POLLACK: Yes.

REDIRECT EXAMINATION

BY MR. POLLACK:

MR. POLLACK: Your Honor, since Mr. Pattison took to read from the letter, I would like to move its introduction into evidence at this time.

MR. PATTISON: Subject to connection, your Honor.

THE COURT: It may be marked.

MR. PATTISON: Subject to a proper predicate being laid.

THE COURT: A proper what?

MR. PATTISON: A proper predicate, basis, foundation being laid.

THE COURT: It may be marked.

THE CLERK: Petitioner's Exhibit 3 previously marked for identification is now marked in evidence.

(So marked)

THE COURT: The basis has already been established. He said this was the letter given to him by --

MR. PATTISON: This is the letter that he saw, your Honor. There wasn't any evidence as to who actually wrote it.

THE COURT: It is in relation to the testimony.

MR. PATTISON: As to Mr. Mattio's testimony only, your Honor.

THE COURT: "This is the letter I saw." If that testimony is admissible, certainly the letter is admissible.

MR. PATTISON: Yes.

THE COURT: All right.

BY MR. POLLACK:

Q Mr. Mattio, at the time you saw Petitioner's Exhibit 3, the letter, had Mr. Anthony Polisi been tried for the bank robberies?

A Yes, sir.

Q Had he been convicted?

A Yes, sir.

Q When Zaher writes, "You see how we framed this guy Tony," it's in the past tense, referring to the conviction of Anthony Polisi, is that correct?

A That's correct.

Q At the time you got the letter, had John Franzese been indicted for bank robberies?

A Yes.

Q Had he been tried?

A No, sir.

Q When Mr. Zaher writes, "And I have to go along with the guys to frame this guy Sonny to," that's in the future, isn't it?

A Yes, sir.

Q And that refers to the pending indictment of bank robberies against John Franzese?

A Yes.

MR. PATTISON: I object, your Honor, as to

what it refers to.

THE COURT: I will allow it.

MR. PATTISON: What he assumed it referred to is another thing.

THE COURT: I will take it as what he understood it referred to.

BY MR. POLLACK:

Q Mr. Mattio, did you have a job or did you have anything to do with a car ring at this time?

A Yes, sir.

Q When Mr. Zaher says, "Do you still have my keys," does it refer to that?

A Yes.

MR. PATTISON: I object, your Honor.

THE COURT: Is that the way you understood it?

THE WITNESS: Yes.

THE COURT: I will allow it.

Q Did you have a set of keys for all General Motors cars for 1965?

A Yes, sir.

Q Did Mr. Zaher have the same set of keys?

A Yes.

Q "I should of stayed robbing the cars with you at least there was more money in it," what do you understand

that to mean?

A That there was more money in it.

Q What were you doing with Mr. Zaher regarding cars?

Q We'd open up the trunk[illegible] f there was anything worthwhile taking, we took it.

Q Did you have a storage place?

A Yes, sir.

Q Where was that?

A Ozone Park, Queens.

Q What was it?

A A garage.

Q Is that what he means when he says, "Do you still have the garage?"

A Yes, sir.

Q The keys that you had, you could get into any car from General Motors for that year?

A Any car up to '65.

Q Up to '65?

A Yes.

Q Therefore, you didn't need any help in opening a car?

A No, sir.

Q Did you need any help in starting a car?

A No.

Q You never had to jump wires if you wanted to steal a car?

A Never.

Q And Mr. Zaher had access to those keys also, correct?

A That's right.

Q When Mr. Zaher says, "I tryed to bug out but I didn't make it," what is he referring to?

A I think he tried to cut his wrists once.

Q Did he try to cut his wrists prior to the time you received this letter?

A I believe so.

Q Were you aware that he tried to cut his wrists?

A Yes.

Q Did he talk to you about that?

A Yes, sir.

Q What did he tell you?

A He told me he was going to try and bug out so he wouldn't have to do any time.

Q What does "bug out" mean?

A If you are crazy, you don't do any time, they send you away for a study, when they feel you are all right, they let you out.

Q When he says, "I don't mind testifying against guys I don't know but you are a different story," what do you understand that to mean?

A At the time this all happened he was my best friend. I didn't think that he would testify against me.

Q When he says, "If you go along with us I will have no choice," did you understand that to mean what the words import?

A Yes, I understood it.

Q What did it mean?

A It meant either I do what he wants me to do or I'm going to be in trouble with the rest of them.

Q And you understood that?

A Yes.

MR. POLLACK: I have no further questions, your Honor.

THE COURT: Anything further?

MR. PATTISON: No.

THE COURT: You may step down.

(Witness excused)

MR. POLLACK: May I have five minutes to talk to my next witness?

THE COURT: I will be back in this courtroom at five minutes to 11:00. I expect you to go on then,

Mr. Pollack.

MR. POLLACK: I will be ready.

(Recess taken)

MR. POLLACK: Mrs. Hanna Sulner, your Honor.

H A N N A S U L N E R , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. POLLACK:

Q Mrs. Sulner, what do you do for a living?

A I am an examiner of questioned documents, commonly known as handwriting expert.

Q And have you published any materials regarding your work in the area --

THE COURT: I find that the witness is qualified as an examiner of questioned documents.

MR. PATTISON: We will not object to that.

THE COURT: Mrs. Sulner has appeared before me, and she has qualified on the previous occasions, and there is no reason for me to believe that she is less qualified today.

MR. POLLACK: Thank you, your Honor.

BY MR. POLLACK:

Q Mrs. Sulner, I show you what has been marked

in evidence as Petitioner's Exhibit 3, and ask you if you have ever seen that letter before?

A Yes, I did.

Q When did you see it?

A The exact date, if I have it -- I don't, but it was about two weeks ago, probably, two, two and a half weeks ago.

Q That you first saw it?

A Yes.

Q Who --

A I believe so.

Q Who showed it to you first?

A Mr. Votto.

Q Is this Mr. Votto?

A I don't have my diary here.

Q Would the day November 11 --

A If it says so on my card then it was. I really cannot remember without any diary.

Q Mrs. Sulner, were you given any instructions when you were given the document?

A Not instructions, but I asked questions, what is they want to know about it.

Q What were you told was desired to be achieved?

A It wasn't said desired to achieve, Mr. Votto

asked me whether I can determine the age of certain writing, and I told him that, not all the time, and not the writing but probably the paper and there are other clues in a document which might help me, but I can't guarantee him that I will come up with any result at all. If he wanted to leave it to me I will examine it and give him the result.

Q Do you charge a fee for your services, Mrs. Sulner?

A Yes, I do.

Q Were you paid a fee for your services in examining the document?

A Yes.

Q How much were you paid to examine the document?

A Three hundred dollars.

Q And that was just for the examination?

A Examination and all kinds of tests and I told Mr. Votto that I may have to do some legwork and if I arrive at certain conclusions I want to make sure and check it with paper experts and so forth.

Q Do you testify in every proceeding in which you are given a document to examine?

A No, I don't, because if the result is such that it is not favorable to my client, the nature of it, this is the end of the case.

Q Now, when you quoted a fee, was there a subsequent fee to be paid should it become necessary that you testify?

A Yes, it was.

Q And what was that?

A Six hundred dollars.

Q And is that the sum total of the money you received for your appearance here today?

A Yes. I get expenses for some photo work I did.

Q And after examining the letter, were you able to determine by any means the age of the paper?

A Not the exact age but the approximate age.

Q And what is the approximate age you reached a determination on?

A The approximate age, in my opinion, it is between prior to this date, between five and ten years, but it is closer to the ten years than to the five, but I cannot pinpoint it exactly, and I can give reasons why I arrived to this conclusion and why it is not possible to pinpoint it exactly.

Q Would you please tell the Court and counsel for the Government the tests that you did to determine the age of this piece of paper?

A First of all, concerning the pencil writing, it cannot be determined when it was written because the fact that it is light, it could be done with a light pencil today and a dark pencil ten years ago, so that does not give any information whatsoever. However, the creases in the paper and edges of the paper is giving information, and another factor that -- the contents of the paper, the kind of paper it is written on is not in existence today, and years ago they manufactured paper mainly from hardwood and very little pine in it, if any, and very little fluorescent material, just limited amount, and since ten years, let's say, taking that part, today, the paper is very much more pine, less hardwood and the pine is a fluorescent dye which can be very easily determined by anyone, it does not require an expert, just by putting it under an ultraviolet light, and you take paper next to one another and one can see that the contents, because of the fluorescent dye. Paper is manufactured -- this is not an onion skin, this is a heavier paper, and every paper has fibers in it and the -- which has a coat on it. Now, if it is torn, those fibers are very fluffy and it is visible very well under magnification, and if the paper is old, is aged, those fluffy fibers disappear slowly and surely, and you can make a crease -- you can manufacture a crease in a paper, you can try to

make a paper look older by smearing dirt on it, by trying with a knife to make a deeper crease, but certain creases, and the edges, cannot be manufactured and what I did, I made two -- I tore the paper on two places and then I took photographs -- unfortunately, I didn't have enough time because now I remember that in November I went to Washington and I couldn't do it right away, and Mr. Votto didn't want to leave in my possession the paper too long, so I just got it back not long ago, and I made some experiments with photograph , and to my trained eye, it is visible the difference and I believe that if I would put on a good magnification with a light, your Honor would be able to see the difference between the new tear, which could be, you know, can look like, let's say, a little less fluffy for two years but certainly the old tears and the creases which are on the paper aren't manufactured creases, and the damage on the edges, as I says, a forger, or some phony person would think of making a paper dirty, but he cannot make it so yellowish, even if he puts it under the sun, then it would have an even yellow color, or let's say, sometimes they try to make it, but we can determine that. And this is not the situation here.

This is a genuinely old piece of paper.

THE COURT: All right. Go ahead.

THE WITNESS: The fact that the writing and the creases, that they are in the condition they are, also convinced me that it is an old paper.

Q Is there any indication, by the way, the writing goes over the creases?

THE COURT: Of what? Of the age of the writing?

MR. POLLACK: Yes.

A I told you that the writing cannot be determined. Pencil age cannot be determined. But it is not -- the writing was not done after the creases were on the paper. That is for sure, the writing was done before.

Q Did you make blowup pictures of this letter?

A Yes.

MR. POLLACK: May I have them marked, your Honor?

A This is really not -- this is hardly larger than the original size because I just tried to photograph the creases, but the edges aren't the torn portion I enlarged, and here is the scale. But this is not -- this wasn't prepared for a court exhibit, this was really my working copy. So it is not as usual as I prepare a court exhibit, but it is good enough to see.

MR. POLLACK: May I have this marked as

Petitioner's Exhibit 5 for identification.

THE COURT: Any objection?

MR. PATTISON: No.

THE COURT: Let it be marked.

THE CLERK: So marked as Petitioner's Exhibit 5 in evidence.

(So marked)

BY MR. POLLACK:

Q Now, Mrs. Sulner, this Petitioner's Exhibit 5 in evidence, are these two separate pictures of the cuts and edges of the paper to which you have testified?

A Yes. The upper one is the two cuts on the front of Exhibit 3, upper right hand side. The two torn portions which I did are here. The second picture above the scale is the old one on the bottom.

Q Would you please show the Court the differences in the paper and the fluffiness --

A I believe it would look better under the magnification. Those are the little fluffy fibers here.

MR. POLLACK: Would the Government like to see also?

THE WITNESS: I have a magnifier, your Honor, if you don't mind. This is very nice, but not as good as I have this one. If you hold the paper on

the edge you can see that.

THE COURT: Let me see the old one now.

THE WITNESS: I show it to you, each one. Here is a tear. It should be fluffy.

THE COURT: Where is the first fresh tear?

THE WITNESS: This is the fresh tear.

THE COURT: Magnified it looks like a feathery thing, it gives a feathery appearance, the fresh tear.

THE WITNESS: Yes.

THE COURT: I see it. I have no question in my mind that this is an old piece of paper. So let's not spend time on it.

MR. POLLACK: Your Honor, I have no further questions of the witness at this time.

MR. PATTISON: No cross-examination.

THE COURT: You may step down. Thank you, Mrs. Sulner.

(Witness excused)

THE COURT: Next witness.

MR. POLLACK: Your Honor, the petitioner will call Charles E. Zaher, Jr.

CHARLES ZAHER, JR., called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. POLLACK:

Q Mr. Zaher, did you testify in Albany, New York, in 1967, about your participation in two bank robberies in the County of Queens, New York?

A I did.

Q And were those bank robberies on July 7th and July 13th, 1967 -- '65?

A Yes, they were.

Q And did you participate in the actual theft from the bank with John Cordero, Richard Parks and James Smith, also known as Jimmy Ryan?

A Yes.

Q And Mr. Zaher, at that time in Albany, did you testify that my client, John Franzese had met with you in the Aqueduct Motel in July of 1965 to become the, to quote the Court of Appeals, "General Manager of the operation"?

A Yes.

Q Was that true?

A No.

Q When is the first time you saw John Franzese

in person?

A When I walked into the courtroom in Albany.

Q Did you identify John Franzese in the Grand Jury?

A Yes, I did.

Q How was that identification made?

A There was pictures there and I knew all the pictures of everybody else, and assumed that the last picture was Mr. Franzese , and besides, Mr. Parks explained to me how Mr. Franzese looked.

Q What was that explanation?

A He said he looked like Sambo Nattino, a wrestler.

Q What was the distinguishing characteristic you were to look for?

A He has a big neck.

A Mr. Zaher, how long had you known Richard Parks prior to July 7, 1965.

A I went to grammar school with him.

Q How long had you known Tom Mattio prior to that?

A I met Tom Mattio in grammar school, too.

Q Were you in daily contact with these two men during the period of 1965 leading up to July?

A Yes.

Q Now, Mr. Zaher, who participated in the theft from the two bank robberies you were a part of?

A Smith, Cordero, Parks and myself.

Q At the time during the summer of 1965, were you a drug addict?

A Yes.

Q And did you use some of the proceeds from the robberies to buy drugs?

A Yes, I did.

Q And were you arrested on October 8, 1965?

A Yes.

Q And where were you taken upon your arrest?

A To FBI headquarters.

Q And after that?

A To Mr. Gillen's office.

Q And were you locked in the Federal House of Detention then known as West Street?

A Yes, I was.

Q And when you got there, was anybody else there that you knew?

A Yes.

Q Who?

A Smith, Parks and Cordero.

Q Did you have a conversation with them?

A Yes, I had a conversation with them.

Q With who?

A With Parks.

Q When?

A It was the following morning I was arrested. Parks was in maximum security and I was being held in a medical center there where they have drug addicts, and in maximum security they take them out for showers around 8:00 o'clock in the morning and for medication. I was lined up on the medication line when I started talking to Parks. Parks told me that Cordero testified in the Grand Jury about me, and that -- and I asked him, I said what about this guy Polise? He says that -- to tell them -- first of all, he told me to get in contact with the FBI agents and make a statement implicating Tony Polisi and Sal Polisi and by just saying the actual things what we did, but putting Sal and Tony in the involvement. Sal was with me when I robbed the cars and instead of staying at the Kew Motor Inn at the night we robbed the banks we stayed at the Aqueduct Motor Inn and that Mr. Polisi showed us diagrams of the banks.

Q Did Mr. Polisi ever show you diagrams of the banks?

A No, he didn't.

Q Did there come a time when you ceased robbing banks?

A Yes.

Q When was that?

A July 13, 1965.

Q Why was that?

A I got $3,000 and there was no money in it, and besides I was a drug addict at the time and that was ample enough money for me, for my fix for a while, so I didn't want to participate no more.

Q Were you also rifling the contents of cars with Thomas Mattio?

A Yes.

Q And did you use keys you had gained from working for a repossessor for this purpose?

A No, Tommy Mattio was working for the repossessor and I robbed the keys from the repossessor.

Q And you would use the keys to rifle cars?

A Yes.

Q Did you also use the keys to steal the cars?

A Yes.

Q Is that why you were selected as the person to steal the cars?

A Yes.

Q Now, were Parks, Cordero and Smith arrested prior to you?

A Yes, they were.

Q Approximately how long?

A Eight days.

Q After he was arrested, did you have occasion to see Mr. Parks' sister?

A Yes, I did.

Q Where did you see her?

A I went over to the house.

Q And what was her name?

A Regina Parks.

Q Did you then go to the Aqueduct Motel?

A Yes. Mrs. Parks, Richie's mother, told me that Richie told her that Tony Polisi owed him $1,000 and for me to try to get the money for Richie for bail purposes. So I went with Regina Parks down to Aqueduct Motor Inn and there I met Tony Polise and he was very excited, and nervous, he says -- I asked him about the money, he gave me $200 and says, "Don't ever come back here no more," he says the FBI is watching this place.

Q When you went into West Street on October 8th, was there any comment made to you by anybody working at

that facility as to knowledge of who you were or what you had done?

A Yes. In the control room they have an inmate what works there over the psge system, and there they have a typewriter where they take your information, your name, age, and et cetera, and when I sat down he says, "Oh, you are another member of the Parks gang," because when I sat down, he asked what I was here for, bank robbery, he said, "You are another member of the Parks gang."

Q Was there any conversation between you, Mr. Parks, Mr. Cordero and Mr. Smith regarding the exposure to jail time that you had?

A Yes.

Q And over what period of time did these conversations take place?

A Until we went to trial. Until we went to trial and did the testimony, we talked every day. Scheming every day.

Q How long did you stay in West Street, if you remember?

A I think -- after we finished testifying against Tony Polisi, that was in January '66. The late part of January, '66.

Q Then where did you go, sir?

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A We went to Lewisburg?

Q For how long?

A Just a couple of weeks. Then to Danbury.

Q And did you stay inDanbury for a period of time?

A Yes, we did.

Q Until when, sir?

A Until September of '66, I believe.

Q Now, sir, was there any discussion among the four of you, you, Parks, Smith and Cordero, regarding how you could gain leniency for yourselves for your crimes?

A Yes. That's the reason why we implicated Tony Polisi and Sal Polisi originally.

Q And did anybody of the four of you testify in the Grand Jury against Messrs. Polisi besides Cordero?

A I didn't. I don't know about the other guys.

Q Did John Cordero testify at the trial of Anthony Polisi?

A No.

Q Now, sir, was there any conversation among the parties regarding a female member of the group?

A Yes. Miss Elinor Cordero, she was arrested for the bank robberies with John Cordero the day he was arrested and John, Richie and Parks were scheming to put

another woman as the driver, and when John made his original statement he was -- I don't know if he implicated this girl, Annie the singer as the driver, but -- I didn't participate in that part. But I know thatthey were looking for a girl to take the weight off Elinor, the heat, rather, so they picked this girl Annie the singer because she had a prior arrest record for income tax, so they said that she was the driver, and that was one of the conditions, they drop the charges on Mrs. Cordero if John would cooperate.

Q Who made that demand?

A John Cordero.

Q Now, sir, was there ever any conversation regarding the Aqueduct Motel?

A Yes.

Q Was the Aqueduct Motel ever characterized in any way to you?

A Yes. When the FBI agents said that one of the biggest den of thieves they ever seen they were taking pictures of people coming in and out.

Q Do you remember how long after you were arrested that statement was made?

A I believe it was at the time when we were in preparation for Tony Polisi's trial.

THE COURT: Who said that to you?

THE WITNESS: I believe it was -- I don't know which agent. That statement, I don't know. I can't recall, your Honor.

MR. POLLACK: If I may have a minute.

THE COURT: You remember the statement?

THE WITNESS: I remember the statement, but --

THE COURT: Very significant, wasn't it?

THE WITNESS: Yes, it was, that's why I remember it.

THE COURT: You don't remember who made it?

THE WITNESS: Yes, I remember.

THE COURT: Who made it?

THE WITNESS: Mr. Thatcher made that one statement when he mentioned Sonny's name, but I don't remember who said the other statement because it wasn't that --

THE COURT: I'm talking about the statement that, "They are taking pictures of everyone that comes in and out of the motel".

THE WITNESS: Yes.

THE COURT: Who made that?

THE WITNESS: I don't remember, your Honor.

MR. POLLACK: I am looking for a newspaper clipping in which Mr. Gillen is stated as having made

that statement also.

THE COURT: Did you read it in the newspaper, too?

THE WITNESS: No, your Honor.

THE COURT: Let's continue with the examination. He said he didn't read it in the newspaper.

BY MR. POLLACK:

Q Now, sir, when was the first time John Franzese's name was mentioned in regards to this case?

A While we were preparing for the Tony Polisi case, Mr. Thatcher asked us if we knew Mr. Sonny Franzese. And John Cordero said yes, he says, anyway, Mr. Thatcher says that Mr. Hoover would give his left nut for Mr. Franzese.

Q Was there any further conversation at this time?

A Yeah, Cordero said, "What's in it for us if I have information on him?" What's in it for him, rather.

Q Was there any answer?

A No.

Q Was this conversation pursued at any other time?

A Yes.

Q When?

A When we got back to West Street that night.

Q When who got back to West Street?

A Me, Smith, Cordero and Parks.

Q What was the conversation with whom?

A John Cordero was very excited, he says, "Did you see that," he says, "If we can frame Sonny on -- Sonny Franzese on something, we'll be able to get a suspended sentence."

Q Cordero said that?

A Yes, he did.

Q Did he say why he thought that?

A Because Mr. Hoover wants him that bad.

Q What response did you give and/or Mr. Parks or Mr. Smith?

A I said, I don't even know the man. The same thing with Parks and then John says, "Well, you didn't know Tony Polisi either that much," because I only seen Tony Polisi twice before, and I didn't -- I never even talked to him till that night, till I got there to borrow -- take the money from him that he owed Parks.

Q What was Mr. Cordero's response to that?

A He says, "We can -- let's try it," he says, so we says, all right, we agreed.

Q And what happened next?

A Well, for the next week or two weeks we discussed a lot of things what we could make up a story on. There was a coin collection, an armored car up in Yonkers, a lot of things we discussed. But we actually didn't commit a bigger crime to pin him on for a sufficient guy, you know, of his reputation, so the only thing what we did commit was the bank robberies, what was sufficient, you know, to name him, so we decided on the fear angle, that we were scared originally to testify against him because we were scared of our lives, but instead we just gave the middleman, Tony Polisi, so we talked about that, we ironed out all the details, ten hours a day we discussed it.

Q Did you ever discuss with John Cordero the concept of fear as explaining away your failure to identify Franzese?

A Yes.

A Did the name Weldon ever come up in your conversation with Cordero?

A Yes.

Q Will you please explain to the Court how that came up?

A When we were in Danbury, this was this guy Weldon, he was locked up alongside of us, and, anyway, Cordero wanted to make arrangements for this guy to kill his

stepdaughter. This way we would put more pressure and heat on the case and he would get a better break.

Q And how about Thomas Zumo, did you ever hear that name?

A I heard of that name, yes.

Q Did you hear of it in connection with this case?

A Yes, I don't -- I can't put the name any place.

Q Would you please tell this Court exactly how the story of Franzese's involvement in this case came about, the predicate fact which was discussed at the meeting and what followed?

A We were looking for incidents to bring a man like Sonny Franzese's reputed character to a meeting with us, and at one time Cordero shot at "Whitey" Florio in the Kew Motel or in the parking lot. This is what took place, what I was told, because I was not there. I said I was there, but I wasn't. Elinor and John Cordero were in the John Doe Room drinking when "Whitey" Florio came in. And Elinor said to John, "That's the guy who killed my husband, 'Ernie the Hawk'", and she said it loud, because she was drinking, and there was a few words between Cordero and "Whitey". Anyway, John walked her out to the car and "Whitey" came out into the parking lot. John seen "Whitey"

come into the parking lot and he thought he was going to hurt him, I guess, and he pulled out his gun and he threw a shot -- shot a few times at Mr. Florio. So from that incident we knew that it was -- we thought it was reported because the FBI agents knew about the shooting incident. So we figured that we would use that as the plot to get Mr. Franzese at a meeting because it was reputed that this guy "Red" Crabbe did have something to do with his murder. All this information I got was from John Cordero and he got it from Elinor, because I never even heard of "Ernie the Hawk" until I got into jail. So we made a meeting for that night, which there was no meeting, and we put all the people we knew, which hung out in the Club Luhau, who we heard were associates of Sonny Franzese, Johhny "Irish", "Red" Crabbe, "Whitey" Florio, and we concocted this story. The original meeting was -- happened account of the shooting, nothing to do with the bank robberies. So then after we -- after John Franzese told John Cordero that, keep his wife's mouth shut, all these so-called people made a confession that they had a part in killing the "Hawk" and all that, and after that meeting was -- we discussed that, Cordero says, "Well, John, how about these -- we're having a hard time stealing cars," and that's when Mr. Franzese announces that he was the big boss in this bank robbery ring, and he would straighten out

from now on. And then the other guys, they ad-libbed, they had their own testimony to say.

Q Mr. Zaher, in July of 1965, did you have any problem stealing cars with your repossessor keys?

A No, I didn't.

Q Did you testify that you left the conspiracy because they were going to kill you because you had talked?

A Yes.

Q And the testimony was that even though they were going to kill you, you still were summoned to a meeting in which Mr. Franzese announced himself as the boss of this operation?

A Yes.

Q And then subsequently you had nothing further to do with this situation, is that correct?

A Yes.

THE COURT: Where did you live in July of 1965?

THE WITNESS: I lived 96-06 Jamaica Avenue, about a mile from where this all took place. We all lived in the neighborhood, me, Parks, Smith and Cordero.

THE COURT: That's the only residence you had?

THE WITNESS: Then, yes, the only residence. I lived with my mother.

THE COURT: You went home every night?

THE WITNESS: Yes.

THE COURT: All through the month of July 1965?

THE WITNESS: No, I, a few times I stayed in motels.

THE COURT: For how long?

THE WITNESS: Just one night. I came home every night.

BY MR. POLLACK:

Q Mr. Zaher, did the concept of perjury enter into yourdiscussions with your fellow co-defendants?

A Yes.

Q In what manner?

A Well, we asked Cordero, I says, "You can get me in more trouble than what I am in," I says, "I got the bank robbery," I says, "You are going to get me perjury," he says, "Don't worry about it, a guy like Sonny with his reputation will never take the stand and try to refute what we were saying."

Q Did you rely upon that?

A Yes, because Mr. Cordero had great knowledge of the law.

THE COURT: He said he did or you know that he had great knowledge of the law?

THE WITNESS: I knew he did, because he wrote up writs and the way he talked, people used to come to him and ask him about legal advice. He spent all his life in jail, your Honor.

THE COURT: How much education did you have?

THE WITNESS: No education. I didn't even graduate high school. I was out -- a freshman, I quit, I quit when I was a freshman in high school.

BY MR. POLLACK:

Q When did you first begin talking to authorities in Queens County about the Rupolo murder?

A I guess right after this, while the bank robbery indictment was on. I don't recall the exact date. Cordero got all these meeting set up.

Q You say Cordero was knowledgable about the law?

A Oh, yes.

Q Did he know the difference between the requirements of a federal and state conspiracy charge?

A Yes.

Q Did he tell you what the differences were?

A Yes.

Q What were they?

A In state court you need outside corroboration,

in federal court, no.

Q Now, did the need for outside corroboration cause you to do anything?

Q I don't understand that.

Q Did you try -- did you make any efforts to get somebody to give outside corroboration?

A In state court?

Q Yes.

A I didn't, but I'll tell you, in this murder charge, this homicide charge, one day Cordero comes back from a visit from his wife and he's laughing, he says, "You know, somebody is out in Long Island in jail by the name of John Ripacki , and you know something, he's saying the same thing what we are saying," and I thought he was, you know, a liar, because you know, he's -- John liked to joke a lot and sometimes he used to act a little crazy. And he was telling the truth. This guy John Ripacki said something, he implicated not Mr. Franzese, just Johnny "Irish" -- I mean "Red" Crabbe having something to do with "Ernie the Hawk's" murder.

Q Did you writea letter to Thomas Mattio?

A I did.

Q What was the purpose of that letter?

A To tell Tommy that they were putting a lot of

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pressure on me to testify and, see I was having problems with this hijacking case, I already testified against Polisi, I testified against the Grand Jury, against Mr. Franzese, and Gillen had this hijacking case --

Q When you are saying Gillen, who are you speaking about?

A Mr. Gillen, Michael Gillen, the United States Attorney.

THE COURT: You had told Mr. Mattio before when he came to visit you that they were trying to frame Franzese, right?

THE WITNESS: No. Tony Polisi, the first visit.

THE COURT: You told him before you wrote the note, right?

THE WITNESS: Yes.

THE COURT: Why did you feel it necessary to put it in writing?

THE WITNESS: Because I was trying to explain something to him.

THE COURT: What?

THE WITNESS: What?

THE COURT: What?

THE WITNESS: I was going to tell him he has

to come along or they'll force me to testify against him in the hijacking case. I don't remember what I said to Tommy when he came into jail, those first two times. See, first of all, I seen Tommy Mattio every day, we were like brothers, right, and I don't remember what I said to him or when I said it to him, you see.

THE COURT: Is this the only note you ever sent him?

THE WITNESS: I sent him two letters.

THE COURT: The same way, through your wife?

THE WITNESS: Yes.

THE COURT: What did the other one say?

THE WITNESS: I don't know. You know something, your Honor, I forgot that I even wrote this letter. I forgot --

THE COURT: I'm talking about the other one.

THE WITNESS: I don't know.

THE COURT: Go ahead.

BY MR. POLLACK:

Q Mr. Zaher, what message were you conveying to Mr. Mattio -- excuse me, strike that. Directing your attention to the hijacking case, did you commit the hijacking for which Mattio was indicted?

A Yes.

Q Were you part of it?

A Yes.

Q What part did you play in that hijacking?

A One of the guys who was giving up the truck --

Q When you say "giving up the truck", you mean someone had lawful possession of the --

A Right, he was the driver, and we was going to steal it from him. That night we met him in the bar and he wanted his money first, so anyway, I punched him around a little bit, and he gave up the truck the next day. And so Gillen wanted me to testify --

Q Were you indicted for that?

A No, I wasn't.

Q Was Mattio indicted for it?

A Yes.

Q Did there come a time when Mr. Gillen learned that you had participation in it?

A Yes.

Q When was this?

A During our preparations during the trial, some part of the trial. You know, the Polisi trial, the Franzese trial -- the Polisi trial.

Q Did that identification come back by the name

"Blackie"?

A Yes.

Q Will you please tell the Court that?

A Anyway, he was reading Mattio's -- because he took the hijacking case over because Mattio -- because Parks was involved in the hijacking, so Gillen took the hijacking case, too. Because he was going to get Parks a suspended sentence. So he was reading the testimony of one of the witnesses and he says, "Gee, you are 'Blackie', you are the one who the FBI is looking for," he says, well anyway, he says, "I won't indict you, but you have to testify against Mattio." I says, "I will not testify against him." He says, "I don't understand, you testified against this guy Polisi, you testified -- you are going to testify against Franzese, but you won't testify against this guy Mattio." I said, "I won't testify, he's a friend of mine." So that's the one reason I was trying to convey a message to Mattio, because here I was cooperating with the Government and then account of this hijacking case, they were putting pressure on me because Gillen was getting me pretty nervous, because he said that he was going to give me 50 years and all that stuff, so the whole windup was I told Gillen, I would not testify against Mattio. He says, "Okay," he says, "I'm

going to put you on the stand and you just -- I'm going to ask you what your name is, and if you have a nickname, and just mention your nickname." I says, "Fine." He said that's all the questions I'll ask you." So I got on the stand. He asked me what my name was, what my nickname was, no further questions. Mattio's lawyer, no further questions. Fifteen minutes later, Mattio's lawyer calls me back. So Mattio's lawyer thought I was going to perjure myself, because I couldn't say that Tommy wasn't involved --

THE COURT: Why not, why couldn't you perjure yourself?

THE WITNESS: Because there was four witnesses against Mattio, the two people who were -- there was an open and shut case, your Honor. There was four witnesses, the truck drivers, the helpers, Parks and here I am testifying -- trying to get myself some time off, I'm testifying against this guy Polisi, testifying against this guy Franzese, and I'm going to sit in this chair and I'm going to commit perjury, it would be ridiculous.

BY MR. POLLACK:

Q What were the consequences of your commiting perjury against Mattio, in your mind?

A I wouldn't do it.

Q What would have been the consequences if you had lied and tried to get Mattio out of the case?

A I would have gotten into a lot of trouble.

Q In what way?

A I might have gotten 50 years, God knows, I don't know.

Q Were you afraid of being indicted for perjury?

A Sure.

Q Were you afraid of being indicted for the hijacking charge itself?

A Yes.

THE COURT: How many years would perjury have added to the exposure you already had?

THE WITNESS: Your Honor, it wasn't just the years for perjury, it was the -- here I was cooperating, I was a Government witness. I was already a rat, I couldn't do time in jail, right, and how would -- it was everything combined. It wasn't the five years perjury.

THE COURT: You feel the Government lawyers would turn on you if you commited perjury?

THE WITNESS: Of course they would. They can't stand for that.

BY MR. POLLACK:

Q And they would have known it was perjury had you exculpated Mattio?

A Right, because they had four witnesses.

Q But in the Polisi and Franzese case there were no witnesses but the four of you?

A Right.

Q Is that -- was that a difference in your mind?

A Yes, there was.

Q Mr. Zaher, I show you the Petitioner's Exhibit 3 in evidence, and ask you if you have ever seen that letter before?

A Yes.

Q When?

A The last time I seen that letter is the last time I wrote it, but I seen a duplicate of the original -- a couple of months ago.

Q When was that letter written?

A That was written in Danbury, spring of 1966.

Q Was it written after Polisi had been tried and convicted?

A Yes.

Q Was it written before Franzese -- after Franzese had been indicted?

A Yes.

Q Was it written before Franzese was tried?

A Yes.

Q Was it written before Mattio was tried on the hijacking charge?

A Yes.

Q Now, --

A Excuse me, Mr. Pollack. One other thing I want to say. When I was in state court on this murder trial, I even called up Mr. Mattio over the phone. Mr. Joseph Price, he was a detective, he got Mattio's telephone number through legal channels and it wasn't Mattio's telephone number, it was his sister's, and I talked to his brother-in-law and his sister telling them to -- at the time to cooperate, to contact Mr. Mosely or Mr. Joseph Price, for Tommy to cooperate.

Q When was this?

A That was after the bank robbery trial. We were on the murder trial. I believe -- or we were -- in the state court. We could have been over there in preparation or it could have been during the trial, I don't recall.

Q Did you testify in the Grand Jury about the Rupolo murder?

A About the Rupolo murder, yes.

Q In that testimony did you mention Thomas Mattio being a participant?

A No.

Q Did you mention Mattio to Detective Price at a later date?

A No. Oh, yes. I didn't, but the -- he was indicted. Parks and them got indicted.

Q You all testified in the Grand Jury the same way, is that correct?

A Yes.

Q Was the indictment returned that day?

A I don't know. It could have.

Q Your testimony, did it mention Mattio?

A No.

Q Did you speak to Detective Price prior to going into the Grand Jury?

A Yes.

Q Had you ever mentioned Mattio to him prior to the Grand Jury?

A No.

Q Did you subsequently mention Mattio, after the Grand Jury?

A Yes.

THE COURT: When you were at West Street with

Parks, Cordero and Smith, was there any discussion about Franzese paying for their legal fees and expenses?

THE WITNESS: That was part of the reason why we were turning against him, because he wouldn't -- they weren't doing the right thing. That was part of our plot.

THE COURT: Did they ever talk about asking Franzese to pay for these expenses?

THE WITNESS: No. We never -- they never --

THE COURT: Do you know whether they ever actually asked him to pay for the expenses?

THE WITNESS: No. We never knew the man, none of us. It was a frame, your Honor.

THE COURT: I'm asking you whether they ever asked Franzese to pay for any of the expenses?

THE WITNESS: No.

THE COURT: You don't know of any such request?

THE WITNESS: No such request. None.

THE COURT: Go ahead, Mr. Pollack.

BY MR. POLLACK:

Q Now, Mr. Zaher, the letter in front of you, how did that letter get out of Danbury?

A I gave it to my wife in the visiting room.

Q Did she take it out at your request?

A Yes.

Q When you say, "Richie is going to testify against you, and they want me to," what do you mean?

A They want me to testify, in the hijacking.

Q When you say, "See how we framed this guy Tony," what are you telling Mattio?

A Mattio knows that there was -- this guy Sonny, we were talking about getting this guy Sonny in trouble.

Q I'm sorry. "Do you see how we framed this guy Tony."

A Right, Tony Polisi.

Q Had the trial against Tony already been completed?

A Yes.

Q Were you speaking in the past tense?

A Yes.

Q "I have to go along with the guys and frame this guy Sonny, to."

A Right.

Q What are you referring to there?

A The bank robbery.

Q Is that what you said next, "For these fucking bank robberies."

A Yes.

Q Why were you so scornful of the bank robberies?

A I didn't want no part of this because the average sentence coming out of Eastern District at that time was eight years for bank robbery.

Q How do you know that?

A Because the guys coming back and, you know, they were getting nine years, ten years for two, three bank robberies.

Q Guys coming back where, to West Street?

A Yes, after they were sentenced.

Q It was your own individual survey?

A Right.

Q You say, "I should of stayed robbing the cars with you, at least there was more money in it," what were you referring to?

A That I shouldn't have gotten involved in the robbing of the banks, I didn't make no money, I made $3,000.

Q "Ann told me she gave you my keys," were those the repossessor's keys?

A Yes.

Q Were those the keys being used to rifle the cars that you were and Mattio were taking possessions from?

A Yes.

Q And those were the keys that you could use to steal any cars up to 1965?

A Yes.

Q "You still have the garage?", what were you referring?

A We used it as a warehouse. Golf clubs, cameras, whatever.

NC fls.

(Continued on next page.)

DIRECT EXAMINATION

BY MR. PATTISON: (Cont.)

Q You were involved in a life of crime?

A Yes.

Q You were ripping people off and stealing their property?

A Yes.

Q You were also dealing with fences and selling the property, correct?

A Yes.

Q And you were making a living at it, weren't you?

A Yes, I was..

Q And there wasn't an awful big risk of being caught, was there?

A No.

Q And if you were caught there wasn't an awful lot of time to do for that crime, was there?

A No.

Q So it was a pretty safe way to live well?

A Right.

Q Is that true for the bank robberies?

A No. There was no money.

Q Why not?

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A Too dangerous and too much time.

Q And you would do it only if you could make the big score as against the petty small scores?

A Right.

Q Were you making the big score in the robberies?

A No.

Q During the two robberies you participated in, did your three co-defendants ever discuss a way to take the vault?

A No. The vault, no. Never enough time. We just hit the teller cages.

Q "Tom, they really had me squeezed in. I tried to bug out but didn't make it."

What are you referring to?

A I tried to make believe I was crazy where I would go to Springfield and come back at a later date maybe a year, two years when this was all over with and maybe I would get, you know, a better break.

So I had John Cordero cut my arm, attempted suicide.

Q And you went to the hospital?

A Yes.

Q And you didn't evern stay overnight, did you?

A No. They stiched me up and sent me back.'

Q It didn't work, did it?

A No.

Q That's not the only time you ran, is it, Mr. Zaher?

A No.

Q But prior to the robbery trial, you also ran -- murder trial, I'm sorry.

A Yes.

Q You escaped from the Civil House of Detention?

A Right.

Q And when you came back to New York you were caught?

A Yes.

Q You were caught in a position where they thought you might have been planning to rob a bank?

A Yes.

Q You were caught outside a bank with a stocking and a gun in your belt?

A Yes.

Q And no charges were ever lodged against you for that, was it?

A Yes, I was indicted.

Q For what?

A Conspiracy to commit robbery, grand larceny

and the gun, possession of a gun.

Q Did you plead guilty to that?

A Yes.

Q And did you get any time?

A Three and a half to seven years suspended.

Q Suspended?

A Yes.

Q You say, "I don't mind testifying against guys I don't know but you are a different story."

Are you referring to the bank robbery charge?

A Yes.

Q You are referring to the murder charge?

A Yes.

Q WEre you referring to the common defendants that are going to be in both?

A Yes.

Q And what do you mean by "But you are a different story"?

A He's my friend. I didn't want to testify against him.

Q In fact, your initial agreement was that you would only identify yourself as Blackie?

A That's all I did.

Q Was that the name that the person knew you

by, the truck driver?

A Yes.

Q Was that the reason that they couldn't identify you to indict you when they indicted Ted Richard Parks?

A Right.

Q Then you say, "If you go along with us I'll have no choice," is that what you intended to convey?

A Yes, I would have to testify in the hijacking case, not frame him for nothing like that.

Q What do you mean to tell Mattio," If you go along with us I'll have no choice"?

A I was trying to show him that we framed a guy, Pollsi, that didn't have nothing to do with it, and here you were in a hijacking case, you were going to go to jail.

Come along with us and you wouldn't go to jail.

Q Go along with you in what regard?

A The frameup.

Q You wanted Mattio to testify?

A Yes.

Q In which case?

A All of them, it didn't make a difference; the murder, the bank robbery, because I would have a chance to talk to Tom and discuss it with him.

Q Should that have read, "If you don't go along with us I'll have no choice?

A Yes.

Q Is that a misstatement on your part?

A I misspelled a word.

Q Left out a word?

A Yes.

Q How far did you go in school, Mr. Zaher?

A Freshman in high school.

Q Did you give your wife instructions on what to tell Mattio?

A Yes.

Q You signed it "Blackie"?

A Yes.

Q Did you receive work back as to what Mr. Mattio's response to that letter was?

A Yes.

Q What was that response?

A He laughed and told my wife that he would do an extra five years in jail for me.

Q What did that mean to you?

A That he was going to go to trial on the hijacking case.

Q What did it mean to you in regard tothe

other trials that you wanted him to go along on?

A I was in a bad position because I told Mr. Gillen I wouldn't testify, but I stuck to it and he made an agreement that I wouldn't have to testify against him.

Q Now, sir, when -- was that letter delivered before Mr. Mattio's hijacking trial?

A Yes, it was.

Q And do you remember when Mr. Mattio went to trial on the hijacking charge?

A No.

Q Did you ever mention the fact that he was found guilty in a letter to your wife?

A Yes.

MR. POLLACK: I'd like to have this marked as Petitioner's Exhibit 6.

THE CLERK: So marked.

xxx (So marked.)

BY MR. POLLACK:

Q Mr. Zaher, I show you Petitioner's Exhibit 6 for identification.

I will ask you to take a moment and read the entire letter and ask you if you have ever seen that letter before (Pause.)

Q Have you ever seen that letter before?

A Yes.

Q Did you write that letter?

A Yes, I did.

Q From where did you write that letter?

A Danbury.

Q Is the date on there,the date you wrote it?

A June 15th, 1966.

Q Was that shortly after Mattio's hijacking trial concluded?

A Yes.

MR. POLLOCK: Petitioner's Exhibit 2 in evidence shows a verdict was reached in the Mattio trial on June 13th, 1966.

That's the relevancy for which it was offered, your Honor.

Q Is the Mattio case mentioned in that letter?

A Yes, it is.

Q Is Elinore Cordero mentioned in that letter?

A Yes.

Q Did Elinore Cordero bring the news to Danbury that Mattio had been convicted?

A Yes.

Q Do you know how she knew that?

A No.

Q Did you mention in there that Tommy said he'd do an extra five years for you?

A Yes.

Q What did you mean when you said, "That's what he told you when you gave him that letter"?

A The letter what my wife -- Exhibit 3.

Q Is that Petitioner's Exhibit 3?

A Yes.

Q And is that the letter you are referring to when you say "That's what he said in response to this letter"?

A Yes.

Q You go on further and you say, "I want him to get a little taste of jail life, if he doesn't he'll always be standing on that street corner talking slick.

"I just hope they give him a high appeal bail of $50,000. I know he can't make it.

"I know he isn't going to make it."

Why were you concerned that Mattio spend time in jail?

A To straighten him out.

Q In what regard, Mr. ZAher?

A He wouldn't get in trouble for something serious, like I did. You know, like the bank robbery.

Q Had you learned your lesson?

A Yes.

Q Mr. Zaher, when were you released from jail?

A December 2ne, 1968.

Q Have you ever been indicted for an offense since then?

A Yes.

Q For what?

A Selling narcotics.

Q When?

A '69.

Q Were you convicted?

A Yes.

Q Did you do some time?

A No.

Q Have you ever been -- had any trouble since 1969 to the present regarding criminal violations"

A I think maybe a petty larceny.

Q Have you ever been employed since 1969?

A Yes.

Q Steady?

A Yes.

Q The same employer?

A Yes.

Q Did you earn over $20,000 last year?

A Yes.

Q Are you a drug addict today?

A No.

Q How long have you been free from the monkey of drugs?

A About five years.

Q Does that letter mention anything concerning your concern for consideration at time of sentencing?

A Yes.

Q What do you say there?

A "Elinore said you read an article in the newspaper. What in turn read to her over the phone -- in turn she read to you over the phone saying, "Defendants who testify against defendants on the same case should not receive any consideration on sentencing date."

I said this is a new law. It sounds incredible.

Q You were concerned abo-t sentencing consideration, weren't you?

A Yes.

Q Was that a prime motivation for your testimony?

A Yes.

Q Was it a prime motovation, to your knowledge, for the testimony of your three co-defendants?

A Yes.

Q Was it a subject discussed often during the period of your incarceration?

A Every day.

Q Did the amount of incarceration have anything to do with the implication of Franzese in the robbery trials?

A What was that?

Q Did you think you would get better consideration if Franzese was a convicted defendant rather than Anthony Polisi?

A Oh, yes.

Q Why?

A Bigger name.

Q Had you heard the name John Franzese before?

A I think I did. I'm not too sure if I did before I got arrested or not. That's the truth. I might have and I might have not.

MR. POLLACK: One moment, your Honor.

(Pause).

Q When you went to Anthony Polisi in September of 1966 -- 1965 for money for Regina Parks, did Mr. Polisi have an obligation to give money to Mr. Parks for bail?

A No obligation.

Just what he owed it to him. That's what Richie's mother told me.

Q Polisi acknowledged the debt and said he didn't have the full amount?

A Yes.

He gave me $200.

Q Mr. Zaher, when you entered the courtroom in Albany, New York, January -- February of 1967, did you enter with the intent to lie?

A Yes.

Q Against John Franzese?

A Yes.

Q Did you intend to lie for consideration on your own involvement in the bank robberies?

A Yes.

Q And prior to the moment you entered that courtroom, had you ever met John Franzese personally?

A No.

Q Ever had discussion with him?

A No.

Q Ever been in the Aqueduct Motel with him?

A No.

Q Ever discussed bank robberies with him?

A No.

Q Ever discussed murders with him?

A No.

THE COURT: Didn't you implicate others as being at that meeting, in addition to the defendant Franzese?

THE WITNESS: Yes, your Honor.

THE COURT: Who else did you say was there?

THEWITNESS: Red Crabbe, "Whitey" Florio, Johnny "Irish".

THE COURT: Who was Johnny "Irish"?

THE WITNESS: Excuse me?

THE COURT: What 's his name?

THE WITNESS: John Matera.

He was reputed -- we -- he used to hang out at the Club Luau, and we heard that he hung out with Sonny Franzese.

THE COURT: So you met Matera before?

THE WITNESS: Yes.

THE COURT: Did you meet Florio before?

THE WITNESS: Yes.

THE COURT: Did you meet Crabbe before?

THE WITNESS: Yes.

THE COURT: But you never met FRanzese before?

THE WITNESS: No.

Q Had you ever been involved in a crime, commission of a crime, with Matera?

A No.

Q With Crabbe?

A No.

Q With Florida?

A No.

THE COURT: Why did you put Floria and Matera and Crabbe at that meeting?

THE WITNESS: Because they were all known, they always bragged how much they knew Sonny, and we needed people who knew Sonny. So we used them.

THE COURT: But you knew them --

THE WITNESS: I didn't fraternize with them, no, I didn't hang out with them or nothing. I used to walk into the bar. I used to shake our heads like that, maybe say hello, but that's it.

THE COURT: These individuals weren't friends

in the sense so you felt free to testify falsely against them?

THE WITNESS: Yes.

THE COURT: I see.

BY MR. POLLOCK:

Q Mr. Zaher, have you ever been offered any money for your testimony here today?

A No.

Q Have you ever discussed money with me?

A No.

Q Have you ever discussed money with Mr. Votto?

A No.

Q Have you ever been to anybody prior to coming forward at this timw with an intent to recant your testimony?

A No.

Q Did you ever go to Maurice Edelbaum?

A Yes.

Q When?

A After I came out of jail in '69. I don't know the date or nothing.

Q Was -- did anything come of your going to Mr. Edelbaum?

A No. He was suspicious of me. And he just

wished me a lot of luck and I left the office.

MR.POLLOCK: No further questions.

THE COURT: Mr. Pattison.

CROSS-EXAMINATION

xxx BY MR. PATTISON:

Q Where do you live, sir?

A 86-06 Jamaica Avenue.

Q Would you correct that?

A 80-79 88th Avenue.

Q You said that you went to see Mr. Edelbaum in 1968, was it?

A I came out in December 2nd, 1968. I believe it was in the early part of '69.

Q You said that he didn't trust you.

A No.

Q Or was it that he didn't trust what you said at that time?

A I didn't say nothing to him. I just -- I says, can I help you in any way with the case? Because at the time when I got out of jail, my memory was fresh and we had flaws in this where we were scared we could get caught on. Not major flaws, nothing like that, just little incidents what we were a little leary about, where some suspicion could be cast on us, but I forget them over the

years.

Q What did you tell Mr. Edelbaum?

A That's all. I asked, can I help you, is there any way I can help your client? I don't remember, I mean, I said it in so many words.

Q Did you tell him that you lied at the trial?

A Yes, I did.

Q You said that -- what did he say --

THE COURT: May I know where this was?

THE WITNESS: It was in his office, your Honor.

THE COURT: In his private office?

THE WITNESS: Yes.

THE COURT: Anybody else present?

THE WITNESS: Yes, two other lawyers, Mr. Feitel--

THE COURT: Lawrence Feitel?

THE WITNESS: Yes. I believe so.

THE COURT: And who else?

THE WITNESS: I don't remember.

Q What did he say to you after you told him you had lied?

A He didn't want to hear nothing. He cut me short and I left the office. I was in there two minutes. He was afraid of me.

Q Did he say that he didn't trust you?

A No.

Q Did he say that he was -- that he had any fear about -- afraid of you in any way?

A No. I just -- the way I felt in the office, like he was suspicious, you know. This is the way, the feeling I got.

Q What raised that feeling?

A Because I was in and out in two minutes. He chased me out.

Q I believe you said earlier that you never saw Sonny Franzese; is that right, prior to your courtroom appearance?

A Yes.

Q Parks told you what he looked like?

A Yes.

Q Had Parks met him?

A Yes.

This is what Parks told me, he met him one time in a bar on -- the Que Motor Inn. He was introduced to him. That's what he told me. I don't know if it was true or not.

Q But he knew what he looked like?

A Yes.

Q You said, I believe, that you have been trying to recant since approximately 1968; is that right?

A Well, I wouldn't say -- I wasn't going to recant in '68. I just asked Mr. Edelbaum if I could help him. Like I told you, at the time when I come out, my memory was fresh, there was a couple of flaws in the whole frameup, which wasn't -- which would cast suspicion on us.

But I don't remember what they were. That's what I was going to go to his office and tell him about certain things, like --

THE COURT: Mr. Pattison asked you whether when you went to Mr. Edelbaum's office, whether you intended to recant, that means change your story

THE WITNESS: No.

I just --

THE COURT: You were just going to tell him that there were certain flawys in your story?

THE WITNESS: Yes. Because I couldn't recant because I'd go back to jail for perjury, right? I wanted to tell him there were certain things in the case that was bothering me, I felt bad that the man got 50 years and everybody else got time, and I

wanted to help out some way.

But I didn't want to help him out bad enough for me to go to jail, no, your Honor.

THE COURT: Didn't you understand that if you were pointing out flaws it was pointing to your perjury?

THE WITNESS: Yes, I did.

THE COURT: You understood that when you went to see Mr. Edelbaum?

THE WITNESS: Yes, I did.

THE COURT: Go ahead.

BY MR. PATTISON:

Q As a matter of fact, didn't you just say, sir, that youtold him that you lied?

A Yes, I did.

Q Not that there were flaws?

A Right.

Q But that you lied?

A Yes.

Q That isn't the same thing, is it?

A Right.

But I wasn't going to take the stand and recant.

Q Was this the first attempt you ever made to inform anyone of the alleged lies that you told at the trial?

A Yes.

Q Who else did you tell you lied at the trial?

A Well, that was it.

Q That's the only person?

A Right.

Until I contacted Mr. Votto. I went to his law firm about eight, nine months ago, and I -- Mr. Votto was in court, which I didn't know Mr. Votto at the time, and I discussed with this one attorney, I gave him the whole story and he asked me -- I originally went in there to ask for Mr. Votto but he wasn't there so I talked to this other attorney. I told him the whole story and he said he would take the case for $10,000.

So --

Q What is that?

A He would be my lawyer for $10,000.

Q Your lawyer as to what, sir?

A As to my recantation right now.

Q Were there any charges pending against you at that time?

A No. He wanted $10,000 to be my counselor.

Q To serve what function, sir?

A My lawyer, on my recantation, to protect my

rights. Right. What is a lawyer for?

Q He wanted to accept $10,000 --

A He wanted $10,000.

Q To represent you as a witness, right?

A Right.

Q The perjury statue of limitations had in fact run, hadn't it, sir?

A Yes.

Q And you knew that, right?

A Yes.

Q How and when did you learn what the perjury statute --

A I always knew that it was five years. That wasn't the reason I'm here now.

Q But five years -- more than five years have elapsed now, is that what you are saying?

A Yes.

Q Did you ever tell any police officer that your trial evidence was in fact a lie?

A No.

Q Did you ever tell any agents, special agents, FBI --

A No.

Q -- that it was a lie?

A No.

Q Did you ever call the courthouse, tell the Judge that it was a lie?

A No.

Q Mr. Edelbaum was the only person you ever told this to prior to your going to see Mr. Votto?

A Yes.

Q Since the time of the trial and now, the present day, have you ever told anybody that your trial evidence testimony was in fact true?

A I may have.

Q Who?

A I don't know.

Q Isn't it a fact that you told your wife that your testimony at the trial was true?

A I told my wife that it was true, and I already told her that it was a lie. I told her numerous times that it was a lie. And I told her that it was true, too. I didn't want her to --

Q In other words, you don't know what she thinks or --

A Right.

Q You infer that she wouldn't know what is true concerning what you are saying now; is that right?

A Right, I didn't want her to know what type of a person I was to do something like this.

THE COURT: To do which?

THE WITNESS: To frame a person. I was -- I told her it was a lie and I told her it was the truth, both, you know, at different times.

THE COURT: Mind you, when you told her it was the truth, you were telling her that you were involved in bank robberies, weren't you?

THE WITNESS: No, that Mr. Franzese was involved.

THE COURT: No, but that you were also involved, weren't you?

THE WITNESS: Yes, she knew I was involved, she knew that.

THE COURT: But over a longer period of time, if you were telling the truth: is that right?

THE WITNESS: I don't understand you.

THE COURT: If your testimony at the Franzese trial was the truth, then you would have been involved in the bank robbery over a longer period of time?

THE WITNESS: No, she was -- she knows I was only involved in those two. Before I got arrested she knew my business.

THE COURT: When you told her it was the truth,

weren't you telling her that you were involved for a longer period of time?

THE WITNESS: No. I was just telling her -- I already told her that I lied against this guy Sonny, I framed him.

Then I'm telling her it's the truth, no, he was involved in the case. I told her, you know, a couple of times back and forth. That I lied, and that I framed him --

THE COURT: You told her that it was a lie when you wanted her to know that you did a terrible thing in lying?

THE WITNESS: Right, yes.

THE COURT: Why did you tell her it was the truth?

THE WITNESS: I don't know. I just told her two different things, two different stories, your Honor. There must have been some reason at the time, the reason I told her.

THE COURT: But you can't think of the reason?

THE WITNESS: I cannot think of the reason.

BY MR. PATTISON:

Q What you told her, whether it was the truth, whether it was a lie, you would ascertain which would serve

your interest better at that particular moment and then tell her what you wanted to say: is that right?

A That could be true.

Q Sir, about a year ago, just about a year ago today, did you receive a note at your home?

A Yes, I did.

Q From whom, sir?

A FBI Agent, Mr. Putz, I believe.

Q Do you know Agent Putz?

A Yes, I do.

Q That is the man sitting here, isn't it?

A Yes.

Q Where's the note, sir, do you happen to have it?

A I have it at home, I believe. Or I threw it away. I don't know. I probably have it at home.

MR. POLLOCK: Your Honor, may I ask that the question be read back.

THE COURT: Mr. Sulzer.

(Record read.)

BY MR. PATTISON:

Q When for the first time did you see that note, sir?

A When I came home from work that evening.

Q What did the note say?

A To call Mr. Dutz or Mr. Thatcher at such and such number, or another FBI agent, I forget his name.

Q Talia?

A That could be it.

Q Does that name ring a bell?

A Yes, it sounds familiar.

Q As soon as you got the note, did you call the number?

A Yes, I did.

Q As soon as you got the note?

A I don't know. I might have waited a day, I don't know. No, I must have waited the next day or the following day because when I came home from work it's 5:00 o'clock.

Q Isn't it a fact, sir, that you waited about three or four days?

A Oh, I did? Then I must have called --

THE COURT: The question is: Did you?

THE WITNESS: I must have. I don't know, did I? I don't know.

THE COURT: Please try and answer the question. If you can't recall say you can't recall.

THE WITNESS: Your Honor, I don't recall.

THE COURT: That is an answer.

Q It is possible that you did wait as long as three or four or even five or so days?

A Yes.

Q To call, right?

A Yes.

Q But you did call, didn't you?

A Yes, I did.

Q And who did you talk to, sir?

A I don't know.

Q Malia?

Isn't it a fact that you spoke to him?

A I don't know, Mr. Pattison.

Q You don't recollect the name?

A No.

Q But you did call the main office; FBI?

A Yes.

Q Correct?

A Yes.

Q Now, at the time of this call, where were you, sir?

A At home.

Q Was Agent Putz there with you?

A No.

Q Was Agent Thatcher there with you?